United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7067

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES FIDELITY & GUARANTY COMPANY,

Plaintiff-Appellant,

vs.

ROYAL NATIONAL BANK OF NEW YORK and MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,

Defendants-Appellees.

JOINT APPENDIX

Volume I, JA 1 - JA 300

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UNITED STATES COURT OF APPEALS
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UNITED STATES DISTRICT COURT

JUDGE WERKER

Jury demand date: 5/20/68 by Plaintiff.
12-23-68 by deft.

D. C. Form No. 106 Rev.

TITLE OF CASE

UNITED STATES FIDELITY & GUARANTY COMPANY

VS

ROYAL NATIONAL BANK OF NEW YORK
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.
~~FRANK MAZZOCHI, JR.~~

ATTORNEYS

For plaintiff:
Samuel Komoroff
772-4 Woolworth Bldg. 10007 DI 9-1324

For defendant:
Konheim & Halpern (Merrill Lynch,etc.)
11 Park Place 10007

Hart & Hume
(for Royal Nat'l. Bank of N.Y.)
10 E. 40 St., NYC 10016 (686-0920)

Noah L. Braunstein(deft. Mazzochi)
475 5th Ave.,NYC

Frank Mazzochi,Jr.-Pro Se
#13383 Drawer B,Stormville, N.Y.,12

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		5/20/68	Komoroff	15 —	
J.S. 6 mailed ✓	Marshal		5/21/68	Rec'd.		15
Basis of Action: Recovery under subrogation rights on loss of sustained through theft of securities. ($217,000)	Docket fee					
	Witness fees					
Action arose at:	Depositions					

BEST COPY AVAILABLE

DATE	PROCEEDINGS	Date Order Judgment No.
y 20-68	Filed complaint and issued summons.	
n 19-68	Filed summons & return, service as follows:	
	Royal Nat'l Bank of N.Y. by R. Santora 5-22-68	
	Merrill, Lynch, Pierce, Fenner & Smith, Inc. by Mr. Dolan 6-4-68.	
	Frank Mazzochi, Jr. personally 5-27-68.	
ne 21-6	Filed ANSWER of Merrill Lynch Pierce Fenner & Smith, Inc. to complaint, and Cross-Complaint.	
	[illegible]	H
c 23-68	Filed deft's (Royal Nat'l. Bank of N.Y.) ANSWER & jury demand	H&H
c.30-68	Filed ANSWER of deft. Royal National Bank of New York to cross-claim of deft. Merrill Lynch, Pierce, Fenner & Smith, Inc.	H&H
c.31-68	Filed Notice to take Deposition.	
.21.69	Filed Pltffs notice of motion ret. 5.1.69 for an order granting leave to take depostion.	
28-69	Filed Deft/ Merrill Lynch etc. affdvt in support of motion Ret. 5-1-69	
r.28-69	Filed Plaintiff's Interrogatories.	
r.28-69	Filed Plaintiff's Interrogatories.	
r.30-69	Filed Affidavit of William Hart.	
1-69	Filed (in court) Movant's Memorandum.	
y 1-69	Filed MEMO.END, on motion papers filed 4/21/69. Motion granted on consent. SETTLE ORDER ON NOTICE. Pollack, J.	
y 7-69	Filed stipulation and order extending deft. Royal National Bank of New York's time to answer interrogatories to 6/2/69. So ordered. Metzner, J.	
y 8-69	Filed stipulation and order extending deft. Merrill, Lynch, Pierce, Fenner & Smith's time to answer interrogatories to 6/2/69. So ordered. Metzner, J.	
y 26-69	Filed Notice of Settlement and Order -- the deposition of Frank Mazzochi, be taken at the Courthouse on 6-24-69 10 A.M. A writ of habeas corpus ad testificandum be issued, etc. The other defts. in this action may participate in the deposition of said Frank Mazzochi, Jr. in accordance with the provisions of the FRCP.-- Pollack, J. Writ issued ret. 6-24-69. mn	
y 28-69	Filed stip and order - time of deft. Royal Nat, Bank to answer interrogs. be ext. to 6-2-69 -- so ordered--McLean, J.	
y 28-69	Filed stip and order the time of deft. Merrill, Lynch, Pierce to answer the interrogs. served upon it by pltff. be ext. to 6-20-69 -- so ordered--McLean, J.	
n 20-69	Filed stip and Order - time of deft. Merrill Lynch, etc. to answer interrogs. is ext. from 6-20-69 to 7-15-69-- so ordered--Lasker, J.	
l 3-69	Filed defts. Merrill Notice of motion ret. 7-10-69 compel answers 10 A.M. Room 506	
l 3-69	Filed defts. Royal National Bank Answers to interrogs.	
l 10-69	Filed stip and Order -time of pltff. to object to interrogs. is ext. to 8-15-69 -- so ordered -- Ryan, J.	
l 11-69	Filed defts. Merrill Lynch Answers to pltffs. interrogs.	
11-69	Filed Affdvt. and Order appointing Noah L. Braunstein as atty. for Frank Mazzochi, Jr. . Receipt for certified mail attached (881798)	
l.18-69	Filed transcript of record of proceeding of 7-10-69.	
l.18-69	Filed transcript of record of proceeding of 7-10-69.	
.22-69	Filed deft. Royal Nat'l Bank notice to take deposition of James J. Barbi, - subp. issued,	
l.22-69	Filed deft. Royal Nat'l Bank notice to take deposition of pltff.	
l.25-69	Filed stip and order that examination of pltff. is adjourned to 8-19-69. So Ordered--Tyler, J.	

68 Civ.2054 US Fidelity & Guaranty Co. -v- Royal Nat'L Bank,et al JA3

D. C. 110 Rev. Civil Docket Continuation [redacted] 68 Civ. 2054

DATE	PROCEEDINGS	Date Ord Judgment
ul 31-69	Filed Memo on motion filed &-3-69...Motion denied following argument without prejudice to a renewal as directed by the Court. So Ordered--- Mansfield,J.	
3-69	Filed affirmation of Gerald H. Greene (Deft)	
.31-69	Filed Plffts. Memorandum (Filed in Court)	
ug.11-69	Filed stip. and order-- time of plfft.to move with responses to Interrogs. ext. to 9-1-69 --- So Ordered. ----ManMahon, J.	
ug.13-69	Filed Order that Writ AD TESTIFICANDUM be extended to 8-19-69 at 11:00 A.M. & 9-9-69 as to Deft. Frank Mazzochi,Jr.Re: depositions of plfft. and of James J. Barbi, as a witness. MacMahon, J. (Mailed Notice & copy of order to Noah L.Braunstein).	
Sept.11-69	Filed pltffs, request to enter default of deft. Mazzachi,Jr	
Sept.16-69	Filed pltff's affidavit & Notice of Motion -Default Judgment- ret. 9-23-69.	
Sept.16-69	Filed pltff's affidavit & Notice of Motion for Satisfying the Writ- ret. 9-23-69.	
ep.15-69	Filed deposition of Rannk Mazzochi. m/n	
ept.24-69	Filed Memo Endorsed on pltff's motion to satisfy writ-filed 9-16-69- --Motion granted without objection. So ordered-Bryan,J.	
ep.30-69	Filed pltff's notice to take depositions of persons indcated.	
ep.30-69	Filed pltff's notice to take deposition of Robert Kayner.	
ct.3-69	Filed deft.(Merrill,Lynch,etc.) notice of taking deposition .	
ct.3-69	Filed deft's (Mazzochi) notice of appearance.	
ct.7-69	Filed deft Merrill,Lynch interrogs. to pltff.	
ct.14-69	Filed stip and order that pltff's time to answer or move to interrogs. is extended to 11-7-69. So Ordered--Ryan, J.	
ov.13-69	Filed pltff's affidavit and notice of motion to strike interrogs. ret. 11-20-69.	
ov.21-69	Filed pltff's notice to take depositions of deft.Royal Ntl Bank by persons listed.	
ec.10-69	Filed deft's (Royal National Bank) affidavit & notice of motion to vacate notice of deposition ret. 12-18-69.	
ec.16-69	Filed pltff's affidavit and notice of motion to produce, etc. ret. 12-18-69.	
ec.16-69	Filed brief supporting pltff's application to strike Merrill Lynch interrogs.	
ep.22-69	Filed answering affidavit of Noah L.Braunstein.(filed in court).	
an.20-70	Filed reply of Samuel Komoroff to Braunstein affdvt.	
an.20-70	Filed pltff's brief in opposition to cross motion.	
an.20-70	Filed affidavit of Noah L. Braunstein in rebuttal.	
an.20-70	Filed reply of Samuel Komoroff to Mazzochi cross motion.	
an.20-70	Filed memo.endorsed on motion filed 9-16-70--Motion of pltff.to enter default judgment is denied.Cross motion of deft.Mazzochi to open default and for leave to answer complaint is granted. It is directed that the answer of deft.be served within 30 days from this order. So Ordered--Bryan, J. m/n	
eb.6-70	Filed ANSWER of deft. Frank Mazzochi,Jr.	FM
eb.11-70	Filed deft.Mazzochi notice of motion for writ of habeas corpus, ret. 2-24-70.	
ar.10-70	(Filed in court) pltff's brief opposing Mazzochi's motion for a writ of habeas corpus.	
ar.10-70	(Filed in court)affidavit of Robert S. Hammer in opposition.	
ar.10-70	Filed in court-affidavit of Samiel Komoroff in suppo opposition.	
ar.19-70	Filed reply of Frank Mazzochi to pltff's answering affidavit.	

CONT'D page #3

JUDGE WERKER JA4

68 CIV 2054 U.S.FIDELITY & GUARANTY CO.VS.ROYAL NAT"L BANK OF N.Y.,ET AL. 68 C

DATE	PROCEEDINGS	Date Order Judgment N
ar.19-70	Filed Memorandum-this is a motion by deft.Mazzochi for a writ of habeas corpus.The motion is denied. So Ordered--Wyatt, J. m/n	
ar.26-7	Filed Sepcial Master's Rport of Martin D. Jacobs.	
ar.26-70	Filed memo.endorsed on motion filed 11-13-69--with respect to motion by pltff. and by deft.Royal Bank as to notice of depositions, the parties shall agree upon a time schedule for depositions of 7 individuals,etc. The motions are otherwise denied.Pltff's motion objecting to interrogs. propounded by Merrill,Lynch; objections are sustained and overruled as indicated.Answers shall be served within 30 days. Cannella, J. m/n	
ar.30-70	Filed Reply to opposition of Attorney Ganeral by deft. Mazzochi.	
or.15-70	Filed stip and order that pltff's time to answer interrogs. of Deft.Merrill,Lynch,Pierce,Fenner & Smith is extended to 5-11-70. So Ordered--MacMahon, J.	
ay 9-70	Filed stip and order that pltff's time to answer interrogs. of deft, Merrill,Lynch,Pierce,Fenner & Smith is extended to 6-1-70.So Ordered--Metznor, J.	
un.1-70	Filed pltff's answers to interrogs. of Deft. Merrill,Lynch,Pierce Fenner & Smith.	
Sept 21-70	Filed Deft Frank Mazzochi, Jr. affdvt & notice of motion for a transfer in order to prepare for trial in this action and other relief. -- Returnable Oct 13-70.	
ct 7 70	Filed affidavit of William Hart Re: Motion by deft	
ct.13-70	Filed affidavit of Nathan A. Jankowitz in opposition to motion of deft. Frank Mazzochi Jr.(Filed in court.)	
ec.29-70	Filed memo endorsed on deft's F.Mazzochi,Jr.motion filed 9-21-70: to transfer. Application denied, so ordered. Ryan,J.	
an.27-71	Filed deft's request for production of documents.	
an.29-71	Filed pltff's notice to take deposition of W.S. Nathan.	
eb.11-71	Filed Notice to take Deposition of Mutual Credit Union and issued subpoena.	
eb.11-71	Filed Notice to take Deposition of Arnold Dutchen and issued subpoena.	
eb.11-71	Filed Notice to take Deposition of Frank Mazzochi, Sr. and issued subpoena.	
eb.11-71	Filed Request for Production of Documents.	
Feb.18-71	Filed Memorandum in support of Pltf's.Objections to Requests for Production of Documents.	
Feb.18-71	Filed Response, and Objection to, Request for Production of Documents.	
ar. 1-71	Filed pltff's notice to take deposition of Bank of New York, Federal reserve on 3-23-71.	
ar. 1-71	Filed pltff's notice to take deposition of 247 S. 3rd.St. Corp., New York on 3-24-71.	
ar.17-71	Filed pltff's notice to take deposition of F.Mazzochi & Anna Mazzochi on 4-5-71.	
ar.24-71	Filed deft's(Frank Mazzochi,Jr.) affidavit & notice of motion-take deposition ret.4-2-71.	
ar.25-71	Filed pltff's notice to take deposition of F.Mazzochi,Sr. & Anna Mazzochi on 4-29-71.	
pr.8-71	Filed deft's(Frank Mazzochi, Jr.) reply to pltff's answering affivid.	
pr.9-71	Filed pltff notice to take deposition of R.G. Hawthorne on 5-6-71.	
pr.15-71	Filed memo-endorsed on deft's motion F.Mazzochi,Jr.take deposition: Pltff. is directed to limit its deposition of the Mazzochi family, in accordance with rule 31,F.R.Civ P. Deft's motion is denied in all other respects . So ordered. Cooper,J. m/n	
26 71	*Filed Transcript of record of proceedings, dated*	
28 71	*Filed Transcript of record of proceedings dated* ...ioring J.	

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..v 2054 U.S. Fidelity & Guaranty Co. vs. Royal Nat'l Banl of N.Y.etal 68 C.20

D. C. 110 Rev. Civil Docket Continuation JUDGE WERKER Page #4

DATE	PROCEEDINGS	Date Or. Judgment
May.10-71	Filed true copy from the USCA. A petition for a writ of mandamus, having been submitted together with a motion for leave to file, said petition without prepayment of fees. Ordered that leave to file said petition without prepayment of fees is denied, petition is referred to the district court for a hearing on petitioner's, indigency. The district court will explore the advisability of , severing the action as against the petitioner. Clerk.	
ay. 25-71	Filed pltff's notice to take deposition of Frank Mazzochi,Senior, on 8-3-71.	
un.1-71	Filed pltff's amended notice of taking deposition of F.Mazzochi,Senior, & Anna Mazzochi on 8-3-71.	
June 14-71	Filed pltff's application for a writ of habeas corpus ad testificandum for reasons indicated	
June 21-71	Filed deft Royal National Bank of NY objections to written questions of pltff	
June 21-71	Filed deft Royal National Bank of NY objections to written questions of pltff	
une 25-71	Filed ORDER--Ordered that action is severed as to deft Frank Mazzochi only & counsel to the remaining defts' having consented on the record to said severance, & pltff is hereby stayed from proceeding against said deft in this action during the period that deft is confined to a penal institution. Pltff may proceed in this action against remaining defts'-Ryan,J. m/n	
ul 1-71	Filed Notice of Motions Ret. before Cooper, J. on 7/9/71.	
ul 1-71	Filed Affidavit of FrankMazzochi,Jr.	
ul 7-71	Filed MEMO.END. on motion filed 7/1/71. This deft. Mazzochi was brought to this Court on a writ and a hearing was held by me on 6/25/71. I then entered an order severing the action as to Mazzochi and staying plaintiff from proceeding further against him during the period he is confined to a penal institution. Although plaintiff may proceed against the other defendants, it may not do so against Mazzochi. This, I feel, follows the suggestion of the Court of Appeals. I refused to assign an attorney toMazzochi. Ryan, J. (mailed notice).	
l 9 71	Filed Deft Royal National Bank of NY interrogs to the pltff.	
g 4-7 1	Filed deposition of Frank Mazzochi, Sr. taken by pltff on 7-28-71	
g 4-71	Filed deposition of Anna Mazzochi, taken by pltff on 7-28-71	
[illegible]	*Filed Transcript of record of proceedings, dated* [illegible]	
ec 1-71	Filed depositions of R.G. Hawthorne, Mary Leah Pryor & Bernard Holtshauer, witnesses on 5-6-71	
Aug30-72	Filed pltff s designation of trial counsel.	
Aug30-72	Filed pltff's note of issue of readiness for trial.	
ep 1-72	Filed deft Merrill,Lynch,Pierce,Fenner & Smith notice of designation of counsel for trial.	
ep 11-72	Filed deft Royal National Bank of NewYork notice of designation of counsel for trial.	
ct 4-72	Filed pltff's notice of designation of trial counsel Samuel Komoroff,Esq. 233 Bway,NYC.	
ov.26-73	Pre-trial conference held before Mag. Jacobs.	
[illegible]	PRE-TRIAL CONFERENCE HELD BY [illegible]	
08-06-75	Trial begun before Werker,J.	
08-07-75	Trial continued.	
08-08-75	Trial continued.	
08-11-75	Trial continued and concluded - Judge's decision reserved. (brief to be submitted - 9-30-75) (reply to be submitted - 10-14-75)	
[illegible]	[illegible]	
[illegible]	*Filed Transcript of record of proceedings, dated* [illegible]	
11-14-75	Filed reply brief of deft. Royal National Bank of New York	
	Cont'd	

DATE	PROCEEDINGS	Date Order or Judgment
1-15-76	Filed OPINION #43730...I find that as between plaintiff and its assignor and the defendants here plaintiff must bear the loss. The complaint is dismissed. Judgment for the defendants Royal and Merrill Lynch. So ordered. -- Werker, J. m/n	
1-15-76	Filed reply brief of Merrill Lynch Pierce Fenner & Smith, Inc.	
1-15-76	Filed post trial memorandum for the court,	
1-15-76	Filed plaintiff's reply brief	
1-15-76	Filed post trial brief of deft. Royal National Bank of New York.	
1-27-76	Filed plaintiff's post trial memorandum.	
	Filed Judgment and order that defendants have judgment against plaintiff dismissing the complaint. -- Clerk.	
2-10-76	[illegible]	
2-11-76	Filed pltfs notice of appeal to the USCA for the 2nd Circuit from judgment dismissing the complaint on 1-15-76. -- copies mailed to Hart & Hume, Esqs. and Konheim, Halpern & Bleiwas, Esqs.	

OPINION OF DISTRICT COURT DATED JANUARY 12, 1976
(Filed January 15, 1976)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES FIDELITY & GUARANTY COMPANY,

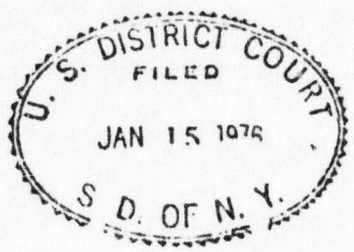
Plaintiff,

- against -

ROYAL NATIONAL BANK OF NEW YORK, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.

Defendants.

----------x



OPINION

68 Civ. 2054 (HFW)

#43730

HENRY F. WERKER, D. J.

This is an action to recover damages for the conversion of certain United States Treasury Notes arising under the following circumstances.

On May 15, 1966, W. E. Hutton & Company (Hutton) had in its possession the Treasury Notes which are the subject of this action in a vault room in the Bankers Trust Company at 14 Wall Street, New York, New York. Late in August 1966 when the cashier of Hutton conducted an in-house audit it was discovered that these Treasury Notes were missing. Thereafter Hutton made a physical search of the vault in order to assure itself that the notes had not been misplaced. As early as September 24, 1966 James Barbi, a partner in Hutton, learned of the missing notes.

United States Fidelity and Guaranty Company (USF&G) was formally notified by Hutton of the loss by letter dated September 28, 1966 to its agent William H. Kreidler Agency which contained a list of the numbers and values of the notes. This letter was written from the Cincinnati office of Hutton by its assistant

operations officer, Thomas A. Rockafeller, who obtained the information by Telex from the New York office. The only record which Hutton had of the numbers of the Treasury Notes was a handwritten list of certificate numbers prepared in May 1966 by the Clerk who clipped the coupons from the Treasury Notes. That list was never produced. The list was essential because it was the beginning point from which Hutton then reviewed its records of Treasury Note transactions from May 15, 1966 to September 1966 to determine which certificates were delivered and received in order to determine which certificates should have been in the vault. The fact that Hutton was required to go through this process in order to determine what securities it had on hand indicates that its system was, to say the least, casual and careless and hardly a secure system. The activity in Treasury Notes was then minimal and the process was not as laborious as it might seem. Those records which were used for this process were never produced although those and the original list were requested by defendants. The records should have been in existence at least until 1974.

There were no safeguards built into Hutton's method of investigation to safeguard against a clerk's error in reviewing the records for purposes of identifying the missing certificates. It is apparent that at least one such error did occur with respect to Treasury Note 31606 in the amount of $5000 which had been received by the Federal Reserve Bank of New York on denominational exchange from Hutton on May 27, 1966.

Although Hutton knew these were bearer securities the title to which passes by delivery they did not report the loss to anyone other than USF&G until November 2, 1966. On that date, at the urging of James E. Bills, USF&G's claims examiner, the loss was reported to the Federal Bureau of Investigation and the

police. This failure was deliberate in order to avoid the bad publicity which might result if the loss was reported.

As long as Hutton did not report the loss to the FBI or police any inquiry as to the notes would have been fruitless. It should be noticed that USF&G although it was informed of the loss made no report to any authority either.

USF&G paid the claim of Hutton under the insurance policy and is here as the assignee of Hutton.

This action was commenced on May 22, 1968. The complaint alleges that the Treasury Notes which Hutton found to be missing were stolen sometime between May 16, 1966 and August 5, 1966. Some of those notes were presented for sale at the 149th Street branch of defendant Royal National Bank (Royal) by one Frank Mazzochi, Jr. (Mazzochi). In accordance with Mazzochi's request Royal sold the notes to defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. (Merrill Lynch) and deposited the proceeds into a personal checking account of Mazzochi which he had opened for that purpose and from which he withdrew the proceeds in cash. The basis for liability is that neither Royal nor Merrill Lynch negotiated the Treasury Notes in good faith or observed reasonable commercial standards so as to gain the exemption from liability contained in § 8-318 of the Uniform Commercial Code. Further with respect to Merrill Lynch it is alleged that it violated Rule 405 of the New York Stock Exchange Rules. This is the so called "know your customer rule" which requires investigation to identify the customer before negotiating securities.

The defendant Royal admits in its answer that it sold certain Treasury Notes for Mr. Mazzochi and deposited the proceeds into his personal checking account from which he subsequently withdrew them. Royal sets up as an affirmative defense § 8-318 of the Uniform Commercial Code. At the trial Royal

moved to amend its answer to include defenses of estoppel, failure to mitigate damages and contributory negligence. That motion is granted since in the opinion of the court all of the parties were aware of the facts in this case and neither the plaintiff nor the codefendant Merrill Lynch are prejudiced by these affirmative defenses.

Merrill Lynch admits that it purchased certain Treasury Notes from Royal, but denies any liability to USF&G. Its answer also contains a cross claim against Royal based upon a breach of warranty which Royal has denied in its answer to the cross claim.

This case was tried without a jury on August 6, 7, 8 and 11, 1975. Six witnesses appeared in open court. The parties stipulated that the pretrial depositions of 15 others would be submitted to the court. The last papers were received on December 11, 1975.

On August 4, 1966 Frank Mazzochi, Jr. came into the 149th Street branch of Royal and approached Rudolph Santoro, one of Royal's employees, for the purpose of selling a $10,000 United States Treasury Note. Santoro was then acting head of the loan department at that branch. Mazzochi identified himself as an officer of the Mutual Credit Union (Mutual). Mutual had been a customer of the bank since around 1950. Its members and officers were customers of the bank and some of its officers had previously in 1965 identified Mazzochi as the new president of Mutual. Mutual was also a frequent borrower at the bank. Mazzochi thus came to the bank upon good recommendation. He was well dressed and presented a neat and gentlemanly appearance.

Santoro's responsibilities at this time were clerical in nature. He did not make decisions or judgments and was not an officer. When Mazzochi told him

of the nature of the transaction it was the first such transaction Santoro had handled as acting head of the loan department. He gave Mazzochi a receipt for the note dated August 4, 1966, and Mazzochi gave him an authorization to sell the note which stated:

"I hereby authorize Royal National Bank to sell for me one (1) $10,000 U.S. Treasury Note # 112255 - Due November 15, 1970 SAC 11/15/66."

Santoro retained the United States Treasury Note and sent Mr. Mazzochi to one of the officers for approval of the sale.

Mr. Mazzochi saw Mr. Robert Kayner a credit officer of Royal with full authority to approve a sale of Treasury Notes. He had met Mazzochi about a year before and knew Mazzochi to be an officer of Mutual and as a person who had accounts in the bank in connection with a contracting business. Kayner recalled that he spoke to Mazzochi only with respect to the first sale, although he acknowledged that the bank's records showed that he had approved two subsequent sales of Treasury Notes for Mazzochi.

According to Kayner, during that first conversation, Mazzochi stated that he was selling the Treasury Note for his family. He approved the sale of the note because he had no reason to believe Mazzochi was not telling the truth or did not have the right to sell the note. The approval was verbal at that time.

Santoro routinely called the Federal Reserve Bank in New York to inquire whether the note had been reported missing or stolen. After receiving a negative response he called Merrill Lynch and placed the order for the sale. Merrill Lynch's confirmation shows the date of trade as August 5, 1966 but Santoro claims he made the sale on August 4, 1966 and physically delivered the certificate on August 5, 1966. There were no instructions to the effect that Santoro was to call

the Federal Reserve and, so far as can be determined, Federal Reserve maintained no official list of missing or stolen securities. The only official list of missing or stolen securities was maintained in the Treasury Department, Bureau of the Public Debt. It is the policy of the Treasury Department that these securities pass freely without undue restriction.

After the sale on August 4, 1966 Santoro prepared a confirmation slip dated August 5, 1966 which Kayner signed to signify his approval.

On August 5, 1966 Mazzochi presented seven Treasury Notes aggregating $60,000.00 for sale. Santoro followed the same procedure with these notes as is set forth above as did Kayner. These were sold for $60,092.93 bringing the total sales to $70,108.42.

The second sale was completed on August 5, 1966.

Mazzochi had requested that the proceeds be paid to him by bank check but instead at Royal's request he opened a personal checking account to which the proceeds of sale were credited on August 9, 1966.

A third sale involving $70,000 in Treasury Notes took place on August 9, 1966. The proceeds of sale amounting to $70,083.70 were credited to Mazzochi's account on August 10, 1966. The balance in his account that day amounted to $140,192.12. Mazzochi withdrew the proceeds of sale in cash. On August 9, 1966 he withdrew $35,000, on August 10 he withdrew $13,000, and then $10,000 on every business day between August 12 and August 23 with a final withdrawal of $10,000 on August 29, 1966. The balance left in the account after the withdrawal on August 29, 1966 was $2,192.12. On September 2, and 23, 1966 he withdrew $500.00 and $1687.00 respectively in cash.

On September 12, 1966 Mazzochi again came to Santoro with 12

Treasury Notes aggregating $72,000. More than a month had elapsed from the time of the first three sales and Royal had heard nothing which would indicate to it that there was any question about those sales. By this time Kayner had left the 149th Street branch. As a consequence Santoro referred Mazzochi to Edward I. McGraw another officer of Royal for approval of the sale. Santoro informed McGraw of the prior sales and this sale was approved by McGraw. The same procedure was then followed by Santoro and McGraw. The 12 bonds were sold on September 12, 1966 for $71,698.70. McGraw had known Mazzochi for almost two years in September 1966 and was on a first name basis with him. McGraw discussed the transactions with Mazzochi and asked him if the notes were his to which Mazzochi replied that they were. McGraw unfortunately died during the pendency of this action and consequently only his pretrial deposition was available to the court.

On each of the delivery tickets which were prepared by Santoro there was endorsed in a conspicuous place "For the Account of: Frank Mazzochi, Jr."

The delivery tickets for the first, second and third sales were addressed to "Merrill Lynch Pierce Fenner & Smith, 70 Pine Street New York City." The delivery ticket for the fourth sale was addressed to "Merrill Lynch Pierce Fenner & Smith c/o Manufacturers Hanover Trust Co. 40 Wall Street New York City." Each of the checks for the proceeds of sale were made payable to Royal's order alone.

When the proceeds of the fourth sale were received by Royal, McGraw ordered them to be held in a suspense account. He then spoke to Mr. Irving Stolz, attorney for Royal, and sent a memorandum to Mr. Peter Walter, the Cashier at Royal's main office, asking both how he should proceed. This was done on September 19, 1966. By letter dated September 21, 1966 and his memorandum

endorsed thereon Mr. Stolz was able to reconstruct these dates but he had no independent recollection of them. Stolz advised McGraw to get an affidavit from Mazzochi asserting ownership of the Treasury Notes. This was done on September 20, 1966 in McGraw's presence with respect to all the Treasury Notes sold for Mazzochi's account in September and August 1966.

Stolz, after he received Mazzochi's affidavit which was enclosed with McGraw's letter of September 21, 1966, called a Mr. Wallace Nathan who was counsel to the Deputy Comptroller of the Currency and Peter Walter called the FBI and the Secret Service. No report that the Treasury Notes were stolen or missing was received from any of these sources. In the meantime Mazzochi retained an attorney, Mr. Leonard Yoswein, to represent him in connection with getting the proceeds of the fourth sale released. Mazzochi came into the bank every day to find out what was happening. Yoswein demanded the funds on the ground that Royal had no legal right to retain them, but was put off on the ground that the Treasury Notes were being checked through various government agencies.

This investigation was apparently concluded on September 29, 1966 for on that day the proceeds of sale were credited to Mazzochi's personal checking account. The banks records indicate that on September 30, 1966, a Friday, Mazzochi withdrew $10,000 and on October 3, 1966, the following Monday, he withdrew an additional $61,000 both in cash. All of the checks drawn to cash by Mazzochi were presented to Royals 149th Street branch and paid in cash. All of these services were rendered to Mazzochi by Royal without compensation.

On September 21, 1966 a report was made to the Federal Reserve Bank of New York as required by Federal regulations of these unusual cash transactions by Mazzochi as follows:

"Within a period of twenty (20) days this money was withdrawn from account in twelve (12) cash transactions."

Mazzochi, before the Treasury Notes transactions, was known to the bank not only through his Mutual connection, but also through a partnership account and a corporate account. None of these accounts involved amounts of money of the magnitude which the Treasury Note transactions did. The accounts did not, on the other hand cause any problems for the bank. Mazzochi had also been approved by the State Banking Department in his capacity as president of Mutual.

Of the 26 notes involved in the Mazzochi transactions I find that Hutton had an immediate right to possession to 24 of those notes. I am excluding notes 31606 and 2214 for the reason that the former was surrendered for denominational change and the latter does not appear to be one of the notes which was possessed by Hutton at the material time. It is true that one note number 2114 was negotiated and if the Telex transmitted list was the only list upon which that appeared an inference could be drawn that there was an error in transmission to Cincinnatti but in this case there is also an affidavit made by one Rudolph Galli in New York which also claims that note to be missing as a result of the routine audit conducted in August 1966. Each of these notes were in the amount of Five Thousand Dollars; therefore, plaintiff's original claim is reduced by that amount.

With respect to the documentation as to how the certificate numbers of the notes were arrived at by Hutton plaintiff had a right to obtain an order precluding any proof with respect to those facts before the trial. It did not do so and must now be bound by the testimony of Mr. Rockafeller which the Court found entirely creditable. It is not necessary that a person be the owner of a chattel to bring an action in converstion. The essential is that the person who claims

conversion has a right to immediate possession.

I am of the opinion that the case of Gutekunst v. Continental Insurance Company, 486 F.2d 194 (2d Cir. 1973) controls the decision in this case. It was there held that a bank which failed to investigate a borrower or his right to negotiate bearer bonds which the bank had accepted as collaterial for a loan did not constitute bad faith and preclude the bank from enjoying the status of a bona fide purchaser even though the bonds were stolen.

The New York law is clear that only actual knowledge or disregard of suspicious circumstances may constitute evidence of bad faith. Gramatan National Bank & Trust Co. v. Mikolajczak, 142 N.Y.S.2d 564 (Sup. Ct. Monroe Cnty, 1955) "Negligence is not enough, bad faith must exist." Coopersmith v. Maunz, 227 App. Div. 119, 237 N.Y.S. 1 (App. Div. 4th Dept. 1929). The codification of this principle in the Uniform Commercial Code §§ 8-301 - 8-304(3) is undoubted. The principles enunciated also form the basis for Royal's claim that it is not liable under § 8-318 because it acted in good faith as agent for Mazzochi. Under the facts which I have stated at length and the New York law, I find that the defendant, Royal as agent, acted in good faith and observed reasonable commercial standards as is required by § 8-318. The testimony of plaintiff's expert on reasonable commercial standards, Mr. Sixt, has been largely discounted for the reason that in this court's opinion he appeared to be biased. The net of his opinion was that those standards required Royal to refuse to deal with Mazzochi. In the light of Mazzochi's relationship to the bank for over a year I do not regard the circumstances sufficiently suspicious to cause the bank concern. This is especially true when considered in relation to the circumstances in Gutekunst where the negotiator had no relationship to the bank and was in fact a stranger to it.

Merril Lynch which ultimately became the purchaser of these Treasury Notes did not know Mazzochi. Insofar as it was concerned it had, in my opinion, the right to rely upon Royal which was its customer and became a bona fide purchaser under § 8-304(3). It had no obligation to by-pass Royal and inquire independently as to who Mazzochi was. If it had inquired of Royal it undoubtedly would have been informed of his contacts with the bank as a customer. I conclude therefore that Merrill Lynch did not violate Rule 405 of the N.Y. Stock Exchange Rules.

The case of Hartford Accident & Indemnity Co. v. Walston & Co., 21 N.Y.2d 219, 287 N.Y.S.2d 58, 234 N.E.2d 257 (1967) which plaintiff claims to have decided the precise issue is inapposite.

Inquiry elsewhere either by Royal or Merrill Lynch would have proven fruitless because Hutton did not report the loss until long after the transactions had been completed and the funds withdrawn. Furthermore, Hutton's actions after the securities were found to be missing were slothful to say the least.

Finally the principle of Bunge Corp. v. Manufacturers Hanover Trust Co., 31 N.Y.2d 223, 335 N.Y.S.2d 412, 286 N.E.2d 903 (1972) is applicable to this case That case stands for the principle that as between two innocent victims the one who has permitted the wrong to occur must bear the loss. While the fact situation is different because in that case plaintiff's faithless employee caused the loss through fraud, here Hutton took a business decision not to report the loss and only did so under the urging of plaintiff's employee. The loss was caused by the failure of Hutton to properly maintain an inventory to insure the security of the notes in its possession and its further failure to promptly report the loss. If it had reported the loss even on September 24, 1966 it might well have avoided a part of

the loss. Even the plaintiff knew of the loss on September 27, 1966 and yet permitted Hutton to maintain its silence until November. The account of Mazzochi was released on September 29, 1966.

I therefore find that as between plaintiff and its assignor and the defendants here plaintiff must bear the loss. The complaint is dismissed. Judgment for the defendants Royal and Merrill Lynch.

SO ORDERED.

DATED: New York, New York

January 12, 1976

Kevin Thomas Duffy
U. S. D. J.

COMPLAINT (Filed May 20, 1968) JA19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES FIDELITY & GUARANTY COMPANY,

Plaintiff,

-against-

Plaintiff demands a jury trial

ROYAL NATIONAL BANK OF NEW YORK, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., & FRANK MAZZOCHI, JR.,

Defendants.

- -x

Plaintiff by its attorney Samuel Komoroff, for its complaint alleges:

1. Plaintiff is an insurance company duly organized in the State of Maryland, with its principal office and place of business in Baltimore, Maryland, and is authorized to do business as a bonding company and does such business in the City, State and County of New York.

2. Royal National Bank of New York (herein called "Royal") is a banking company duly authorized to conduct such business by the Comptroller of Currency, Washington, D.C., and doing such business in the City of New York, including the counties of New York and Bronx, with its principal place of business in New York County.

3. Merrill Lynch, Pierce, Fenner and Smith, Inc. (herein called "Merrill Lynch") is a duly organized Delaware corporation engaged in the business of stockbrokers, with its principal place of business in the City, State and County of New York.

4. W.E. Hutton and Co. (herein called "Hutton"), in business as stockbrokers in New York City, between May and August, 1966, had in its possession, was lawful holder and was entitled to immediate possession, custody and control of 26 Coupon 5% Treasury Notes of the United States, Series A, 1970, with attached coupons payable May 15 and November 15, in the values of and as enumerated in Schedule A, attached hereto.

5. Said securities were stolen from Hutton between May 15 and August 5, 1966, and Hutton discovered some time thereafter that said securities were missing.

Plaintiff hereinafter alleges on information and belief

6. In August and September, 1966, defendant Frank Mazzochi, Jr. (herein called "Mazzochi") produced for sale said stolen securities at Royal's branch, 326 East 149 Street, Bronx County, City of New York.

7. On or about August 5, 1966, a Friday, and during the following week, at Mazzochi's request, defendants wrongfully interfered with Hutton's right to immediate possession to $70,000 worth of said securities by causing them to be cashed, sold and transferred, thereby wrongfully exercising possession, dominion and control over said securities, and converting them.

8. On or about August 9, 1966, a Tuesday, and during that week, at Mazzochi's request, defendants wrongfully interfered with Hutton's right to immediate possession to an additional portion of said securities, totalling $70,000, by causing them to be cashed, sold and transferred, thereby wrongfully exercising possession, dominion and control over said securities, and converting them.

9. On or about September 12, 1966 and during that month, at Mazzochi's request, defendants wrongfully interfered with Hutton's right to immediate possession to the remaining portion of said securities by causing them to be cashed, sold and transferred, thereby wrongfully exercising possession, dominion and control over said securities, and converting them.

10. During August, September and October, 1966, or within a reasonable time thereafter, Mazzochi received from Royal or Merrill Lynch, or both, the cash proceeds of all said sales or transfers, as above stated, totalling beyond $210,000.

11. Hutton received no part of the said cash proceeds, and received no consideration whatever for the cashing, sales and transfers of any of said securities.

12. At the time of said wrongful cashings, sales and transfers, or within a reasonable time thereafter, said securities, with coupons attached thereto, had a reasonable value of $217,000.

13. Defendants Royal and Merrill Lynch had sufficient knowledge about Mazzochi in August and September, 1966 as should have led them to fairly and properly inquire into Mazzochi's title and right to said Treasury notes, and as to the circumstances leading to his acquisition and possession of said Treasury notes; had said inquiry been properly and fairly pursued, it would have led to discovery by defendants of Mazzochi's defect in title, then hidden but actually existing, and that Mazzochi was then engaged in a wrongful disposition of Hutton's securities.

14. Such failure to properly and fairly inquire as to Mazzochi's acquisition and right to possession was imprudent and prejudicial to Hutton's interests, and amounted to bad faith.

15. Prior to August, 1966, Mazzochi's transactions with Royal involved small corporate accounts and were not comparable in size and scope with the sale of said Treasury notes. He was known to Royal only as a depositor on said corporate accounts.

16. Prior to August, 1966, Mazzochi had no personal account at Royal; he was under thirty years of age, and appeared considerably younger; he had not engaged in transactions with Royal involving U.S. Treasury notes, or other securities.

17. In August, 1966, Mazzochi opened a personal account at Royal solely to receive the proceeds from said Treasury notes, and within a short time after said account was opened and the receipt of the first proceeds of said Treasury notes, Mazzochi went to Royal every few days to cash his personal checks for $10,000, or similar large sums of money, in such manner withdrawing the proceeds of the said Treasury notes stolen from Hutton.

BEST COPY AVAILABLE

19. The facts and special circumstances above alleged put Royal on notice of Mazzochi's lack of financial responsibility to deal with Treasury notes in the large amounts involved since the size and scope of such dealings were far greater than his prior transactions with Royal.

20. The said facts and circumstances, including but not limited to the large deposits of the proceeds of said Treasury notes, and the immediate and systematic withdrawal of the same, required reasonable inquiry. The fair and purposeful pursuit of such inquiry would have revealed the truth, exposed the vice in the transactions and led to the discovery of the true ownership of said Treasury notes and the defect in title actually existing, and the purpose for which said securities were presented for sale. Defendants Royal and Merrill Lynch owed a duty to make inquiry concerning said true ownership.

20. Said defendants are bound by the information they would have obtained had reasonable inquiry been made, to wit, that Mazzochi was not rightful owner or lawfully in possession of said Treasury notes. The failure to make reasonable inquiry constituted bad faith by said defendants in dealing with said notes.

21. Said defendants failed to make reasonable inquiry as to where or how Mazzochi had come into possession of the notes, or whether the proceeds belonged to him. Mazzochi's unusual course of conduct involving the immediate and systematic withdrawal of large sums in cash every few days failed to arouse suspicion as to the true ownership of said notes.

21. Said defendants failed to make reasonable inquiry of Mazzochi with a view to verifying his payment for said Treasury notes; they failed to make reasonable inquiry as to his financial ability to purchase said notes, or as to his acquisition of said notes; no request was made for proof as to the source of the monies used to purchase said notes; said defendants failed to request corroborating proof to show ownership, such as confirmation of purchase by Mazzochi through a bank or broker, or

production of any billings for such purchases. JA23

23. Said defendants failed to make reasonable inquiry to learn whether said Treasury notes were properly in Mazzochi's possession, or whether he was authorized to act for the true owner in the conversion of said notes to cash.

24. Defendant Royal failed to use prudent banking judgment. Defendant Merrill Lynch failed to use the standard of care prescribed by New York Stock Exchange rules in dealing with securities. Both defendants acted at their peril in the exercise of dominion and control over said Treasury notes, and in wrongfully selling them for Mazzochi without reasonable, proper and prudent inquiry, and by making the proceeds available to Mazzochi for his use, notwithstanding the existence of the special circumstances heretofore alleged.

25. During the times above mentioned, and for some time prior and subsequent thereto, Hutton was covered by a Brokers Blanket bond executed by plaintiff, which indemnified Hutton, among other things, against loss sustained through theft of securities.

26. Plaintiff paid Hutton for the loss sustained through the theft of said securities, as above described, became subrogated to Hutton's rights in all of said securities, and Hutton has assigned to plaintiff all right, title and interest in and to its cause of action against defendants arising out of the cashing, sales ans transfers of said securities.

27. Plaintiff has duly demanded payment by said defendants of the value of said securities, but no payment has been made.

28. This court has jurisdiction because of diversity of citizenship and the matter in controversy exceeds over $10,000.00 exclusive of interest and costs.

WHEREFORE plaintiff demands judgment against defendants for $217,000, with interest, besides costs and disbursements.

Samuel Komoroff
Plaintiff's Attorney
772-4 Woolworth Bldg.
New York City, N.Y.

LOAN	JA25 DENOMINATION	SERIAL NUMBER
Coupon 5 percent Treasury Notes, Series A-1970	$10,000	117,182
"	10,000	117,183
"	10,000	117,184
"	10,000	117,185
"	10,000	117,186
"	10,000	117,187
"	10,000	117,188
"	10,000	111,900
"	10,000	111,901
"	10,000	112,243
"	10,000	109,144
"	10,000	112,254
"	10,000	112,255
"	10,000	112,271
"	10,000	112,307
"	10,000	112,248
"	5,000	117,851
"	5,000	2,295
"	5,000	22,827
"	5,000	31,606
"	5,000	2,214
"	5,000	3,024
"	5,000	3,131
"	5,000	1,925
"	5,000	35,058
"	5,000	2,166

ANSWER OF DEFENDANT ROYAL NATIONAL BANK (Filed December 23, 1968)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES FIDELITY & GUARANTY COMPANY,	Index No. 68 Civ. 2054
Plaintiff,	ANSWER OF DEFENDANT ROYAL NATIONAL BANK OF NEW YORK
-against-	
ROYAL NATIONAL BANK OF NEW YORK, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., and FRANK MAZZOCHI, JR.,	Defendant Demands a Jury Trial
Defendants.	

Defendant Royal National Bank of New York (Royal), by its attorneys Hart & Hume, for its answer to the complaint herein, alleges:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs of the complaint numbered "1", "3", "4", "5", "11", "25" and "26".

2. Denies each and every allegation contained in paragraphs of the complaint numbered "6", "7", "8", "9", "10", "12" and "17", except admits that in August and September, 1966, defendant Royal received from defendant Frank Mazzochi, Jr., certain Treasury notes of the United States of America; that on behalf of, for the account of, and according to the instructions of defendant Frank Mazzochi, Jr., defendant Royal delivered said Treasury notes to defendant Merrill Lynch, Pierce, Fenner & Smith for sale; that defendant Royal received from defendant Merrill

Lynch, Pierce, Fenner & Smith the proceeds of the sale of said Treasury notes and deposited said proceeds in the personal checking account of defendant Frank Mazzochi, Jr.; and that defendant Frank Mazzochi, Jr. thereafter withdrew said proceeds from said account.

3. Denies each and every allegation contained in paragraphs of the complaint numberes "13", "14", "18", "19", "20", "21", "22", "23", "24" and "27".

4. Denies each and every allegation contained in paragraphs of the complaint numbered "15" and "16", except admits that prior to August, 1966, defendant Frank Mazzochi, Jr. did not have a personal checking account with defendant Royal, but was known to defendant Royal as an officer of certain corporations which maintained checking accounts with defendant Royal upon which defendant Frank Mazzochi, Jr. was authorized to draw.

AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

5. At all times mentioned in the complaint, defendant Royal acted with respect to said Treasury notes as the agent of defendant Frank Mazzochi, Jr., and received from defendant Frank Mazzochi, Jr. and delivered to defendant Merrill Lynch, Pierce, Fenner & Smith said Treasury notes in good faith, observing reasonable commercial standards, according to the instructions of its principal, defendant Frank Mazzochi, Jr.

6. By reason of the foregoing, pursuant to the provisions of Section 8-318 of the Uniform Commercial Code, defend-

ant Royal is not liable to plaintiff herein.

WHEREFORE, defendant Royal demands judgment dismissing the complaint as against it, together with the costs and disbursements of this action.

HART & HUME

By: William Hart
A Member of the Firm
Attorney for Defendant
Royal National Bank of New York
Office & P. O. Address
10 East 40th Street
New York, N. Y. 10016
Tel.: 686-0920

AMENDED ANSWER OF DEFENDANT ROYAL NATIONAL BANK
(Filed December 30, 1968)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES FIDELITY & GUARANTY COMPANY,

Plaintiff,

- against -

ROYAL NATIONAL BANK OF NEW YORK and MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,

Defendants.

Index No.
68 Civ. 2054 (HFW)

AMENDED ANSWER OF DEFENDANT ROYAL NATIONAL BANK OF NEW YORK

Defendant Royal National Bank of New York (Royal), by its attorneys Hart & Hume, for its amended answer to the complaint herein, alleges:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs of the complaint numbered "1", "3", "4", "5", "11", "25" and "26".

2. Denies each and every allegation contained in paragraphs of the complaint numbered "6", "7", "8", "9", "10", "12" and "17", except admits that in August and September, 1966, defendant Royal received from Frank Mazzochi, Jr., certain Treasury Notes of the United States of America; that on behalf of, for the account of, and according to the instructions of said Frank Mazzochi, Jr., defendant Royal sold said Treasury Notes to defendant Merrill Lynch, Pierce, Fenner & Smith, Inc.; that defendant Royal received from defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. the proceeds of the sale of said Treasury Notes and deposited said proceeds in the personal checking account

of said Frank Mazzochi, Jr.; and that said Frank Mazzochi, Jr. thereafter withdrew said proceeds from said account.

3. Denies each and every allegation contained in paragraphs of the complaint numbered "13", "14", "18", "19", "20", "21", "22", "23", "24" and "27".

4. Denies each and every allegation contained in paragraphs of the complaint numbered "15" and "16", except admits that prior to August, 1966, Frank Mazzochi, Jr. did not have a personal checking account with defendant Royal, but was known to defendant Royal as an officer of certain corporations which maintained checking accounts with defendant Royal upon which said Frank Mazzochi, Jr. was authorized to draw.

AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

5. At all times mentioned in the complaint, defendant Royal acted with respect to said Treasury Notes as the agent of Frank Mazzochi, Jr., and received from said Frank Mazzochi, Jr. and delivered to defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. said Treasury Notes in good faith, observing reasonable commercial standards, according to the instructions of its principal, said Frank Mazzochi, Jr.

6. By reason of the foregoing, pursuant to the provisions of Section 8-318 of the Uniform Commercial Code, defendant Royal is not liable to plaintiff herein.

AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

7. Upon information and belief, plaintiff's

assignor, W. E. Hutton & Co., discovered that the Treasury Notes referred to in the complaint were missing or stolen in August or September 1966.

8. Upon information and belief, plaintiff's assignor, W. E. Hutton & Co., acted unreasonably slowly and took an unreasonably long time to identify the actual certificate numbers of said missing or stolen Treasury Notes.

9. Upon information and belief, plaintiff's assignor, W. E. Hutton & Co., knew the actual certificate numbers of said missing or stolen Treasury Notes no later than September 24, 1966.

10. Upon information and belief, plaintiff's assignor, W. E. Hutton & Co., reported the loss of said Treasury Notes to plaintiff no later than September 27, 1966.

11. Upon information and belief, plaintiff and plaintiff's assignor, W. E. Hutton & Co., did not report the loss of said Treasury Notes to the police, the Treasury Department, the Federal Bureau of Investigation or any other person or organization until November 1966.

12. Upon information and belief, plaintiff and plaintiff's assignor, W. E. Hutton & Co., intentionally, consciously and deliberately failed and refused to report the loss of said Treasury Notes, as aforesaid, in order to avoid bad publicity.

13. Plaintiff and plaintiff's assignor, W. E. Hutton & Co., knew that said Treasury Notes were bearer securities and knew or should have known that their delays in identifying the actual certificate numbers of said Treasury Notes and in reporting the loss of said Treasury Notes, as aforesaid, would make it impossible for any

third party to learn or determine that a person in possession of said Treasury Notes might not be in rightful possession of them.

14. By reason of the foregoing, plaintiff is estopped from asserting a claim herein against defendant Royal.

AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

15. Defendant Royal repeats and realleges each and every allegation contained in paragraphs "7", "8", "9", "10", "11", "12" and "13" herein.

16. By reason of the foregoing, plaintiff failed to mitigate its damages.

AS AND FOR A FOURTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE:

17. Defendant Royal repeats and realleges each and every allegation contained in paragraphs "7", "8", "9", "10", "11", "12" and "13" herein.

18. By reason of the foregoing, plaintiff and plaintiff's assignor, W. E. Hutton & Co., had the last clear chance to avoid the damages alleged in the complaint herein.

19. Whatever damages were sustained by plaintiff or plaintiff's assignor, W. E. Hutton & Co., as alleged in the complaint herein, were caused in whole or in part or were contributed to by reason of the negligence of plaintiff and of plaintiff's assignor, W. E. Hutton & Co., following the discovery of the loss of said Treasury Notes, as aforesaid.

WHEREFORE, defendant Royal demands judgment dismissing the complaint as against it, together with the costs and disbursements of this action.

Hart & Hume

By: Willie Hart
A Member of the Firm

Attorneys for Defendant
Royal National Bank of New York
Office and Post Office Address
10 East 40th Street
New York, New York 10016
Telephone: (212) 686-0920

ANSWER AND CROSS-COMPLAINT OF DEFENDANT MERRILL LYNCH (Filed June 24, 1968) JA34

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

UNITED STATES FIDELITY & GUARANTY COMPANY,

Plaintiff,

-against-

ROYAL NATIONAL BANK OF NEW YORK, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., & FRANK MAZZOCHI, JR.,

Defendants.

- -X

68 Civ. 2054

Answer and Cross Complaint of the Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc.

Defendant Demands a Jury Trial

The defendant, Merrill Lynch, Pierce, Fenner & Smith, Inc., by Kanheim & Halpern, its attorneys for its answer to the complaint, respectfully shows the court and alleges:

1. Denies knowledge or information sufficient to form a belief concerning the allegation contained in Paragraphs "4", "5", "6", "11", "12", "15", "16", "17", "18", "24", "25" and "26" of the complaint.

2. Denies each and every allegation contained in Paragraphs "7", "8", "9", "10", "13", "14", "19", "20", "21", "22" and "23" of the complaint except the defendant Merrill Lynch, Pierce, Fenner & Smith, Inc., admits that in or about August and September, 1966, it purchased certain treasury notes from the co-defendant, Royal National Bank of New York, and made payment, therefore, to the said bank.

3. Denies each and every allegation contained in Paragraph "27" of the complaint except that a demand was made upon this defendant by plaintiff's attorney prior to the commencement of this action and such demand was refused by this defendant.

AS AND FOR A FIRST COMPLETE DEFENSE TO THE COMPLAINT AND CLAIM OF THE PLAINTIFF, THIS DEFENDANT FURTHER SETS FORTH:

4. Upon information and belief, the securities, which are the subject of this suit, were negotiable treasury notes in bearer form.

5. At the times mentioned in the complaint, as well as at the present time, the defendant, Merrill Lynch, Pierce, Fenner & Smith, Inc., was and still is a corporation engaged in the City of New York and elsewhere in the business of buying, selling or otherwise dealing with securities and maintained an office for that purpose within the City of New York.

6. Upon information and belief, the securities referred to in the complaint were sold by the co-defendant Royal National Bank of New York to this defendant Merrill Lynch, Pierce, Fenner & Smith, Inc., within the City of New York in the course of the business of this defendant as a dealer in securities.

7. In purchasing the said securities from the co-defendant, this defendant paid full value, therefore, and had no knowledge of any alleged irregularities pertaining to the said securities and in conducting the said transaction this defendant complied with all reasonable commercial standards dealing with the business of buying, selling or otherwise dealing with the securities.

8. That subsequent to the purchases of the said securities, this defendant sold the said securities in good faith, and in all aspects of the transactions hereinbefore set forth, this defendant acted in good faith

9. By reason of all of the foregoing, this defendant is not liable to this plaintiff under the provisions of Section 8-318 of the Uniform Commercial Code and/or by virtue of any of the laws of the State of New York or of the United States of America.

AS AND FOR A FIRST CROSS COMPLAINT AGAINST THE DEFENDANT ROYAL NATIONAL BANK OF NEW YORK AND FOR THE PURPOSE OF PROCURING AFFIRMATIVE JUDGMENT AGAINST THAT DEFENDANT, THIS DEFENDANT RESPECTFULLY SHOWS THE COURT AND ALLEGES:

10. This defendant repeats and realleges each and every allegation contained in Paragraph "4" through "9" of this Answer as though fully and at length sets forth herein.

11. This defendant purchased from the co-defendant the securities referred to the complaint and paid to the co-defendant the full purchase price therefore, in the belief that the co-defendant had title, thereto, and had no knowledge of any irregularities that would impair its title thereto, or impair its right to sell the said securities to this defendant; the said co-defendant still retains the proceeds of the sale thus paid to it by this defendant.

12. Upon information and belief, the co-defendant by selling the said securities to this defendant represented to this defendant as a matter of law, that it had good title to said securities and had no knowledge of any alleged irregularities portaining to the said securities and portaining to its ability to transfer good title thereto to this defendant.

13. If the plaintiff shall recover judgment against this defendant in the within suit, this defendant will be entitled to like judgment against the co-defendant together with interest and costs and in such a contingency it requests like judgment.

WHEREFORE, defendant Merrill Lynch, Pierce, Fenner & Smith, Inc., demands judgment dismissing the complaint as against it and further requests that if plaintiff obtains judgment against this defendant, that this defendant have like judgment against the co-defendant Royal National Bank of New York with cost.

KONHEIM & HALPERN

By: David S. Konheim
A Partner

Atty's for Dft. Merrill Lynch,
Pierce, Fenner & Smith, Inc.
11 Park Place
New York, N. Y. 10007

ANSWER OF DEFENDANT ROYAL NATIONAL BANK TO CROSS-CLAIM OF MERRILL LYNCH (Filed December 30, 1968)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES FIDELITY & GUARANTY COMPANY,

Plaintiff,

-against-

ROYAL NATIONAL BANK OF NEW YORK, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., and FRANK MAZZOCHI, JR.,

Defendants.

----------X

Index No. 68 Civ. 2054

ANSWER OF DEFENDANT ROYAL NATIONAL BANK OF NEW YORK TO CROSS-CLAIM OF DEFENDANT MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.

Defendant Royal National Bank of New York, by its attorneys Hart & Hume, for its answer to the cross-claim contained in the answer herein of defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. (Merrill Lynch), alleges:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs of the answer of defendant Merrill Lynch numbered "7" and "8".

2. Denies each and every allegation contained in paragraphs of the answer of defendant Merrill Lynch numbered "11", "12" and "13".

WHEREFORE, defendant Royal National Bank of New York demands judgment dismissing the cross-claim of defendant

Merrill Lynch against it, together with the costs and disbursements of this action.

HART & HUME

By: William Hart
A Member of the Firm

Attorneys for Defendant Royal
National Bank of New York
Office & P.O. Address
10 East 40th Street
New York, N. Y. 10016
Tel.: 686-0920

PLAINTIFF'S ANSWERS TO INTERROGATORIES OF DEFENDANT MERRILL LYNCH, JANO
NUMBERS 16, 20 & 21 (Filed June 1, 1970)

16. State the name, home address and capacity of the "Hutton" employee who discovered that the said Treasury Notes were "missing", as alleged in Par. 5 of the complaint, and the date of said discovery.

In late August, 1966, Rudolf Galli discovered the Treasury Notes could not be located.

In mid-September, 1966 Tully Prince reported that these Treasury Notes could not be located.

James Barbi discovered these securities were missing on September 24, 1966.

17. State the name, home address and capacity of the person or persons who stole the said Treasury Notes from "Hutton" between May 15 and August 5, 1966, as alleged in Par. 5 of the complaint.

(Response) This is unknown.

18. State the name, home address and capacity of each person who reported the Treasury Notes "missing" to the plaintiff.

(Response) Thomas Rockefeller, 16 Greenbrier Drive, Summit, N.J. James Barbi, 89 Woodland Avenue, Ridgewood, N.J.

19. State whether the persons referred to in Par. 18 above, made such report in writing, and identify such writings and their location.

(Response) Orally and in writing in connection with Hutton's claim under a Brokers Blanket Bond. The writings are located at plaintiff's office, 100 Maiden Lane, New York City and at plaintiff's attorney's office, 233 Broadway, New York City. See Response 6.

20. State whether "Hutton" reported to any Police Dept., the Federal Bureau of Investigation, the United States Treasury Dept., the United Secret Service, or any other agency or persons of any separate State or of the United States that the said Treasury Notes were "missing".

(Response) This was reported by Hutton to the New York Police Dept.; also to the United States Treasury Dept., Bureau of Public Debt; and, on information and belief to the Federal Bureau of Investigation.

21. If such report was made by "Hutton", set forth the date or dates of all such reports, whether such reports were oral or in writing, the name, home address and capacity of the prson or persons making such reports, the name and address of the persons to whom such report was made, and if any of such reports were

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written, identify said writings and their location.

(Response) On information and belief, in November,1966, to New York Police Dept., First Precinct, New York City, and to United States Treasury Bureau of the Public Debt, Washington,D.C. and to Federal Bureau of Investigation. Messrs. Rockefeller and Barbi made these reports for Hutton. The reports were made to H.M. Stephenson, United States Treasury,Bureau of Public Debt and to Detectives Leahy, Rhodes and Johansen, First Precint, New York City Police Dept.

The writings should be with these departments.

22. State whether plaintiff reported to any Police Dept., the Federal Bureau of Investigation, the United States Treasury Dept., the United States Secret Service, or any other agency or person of any separate State or of the United States that the said Treasury Notes were "missing".

(Response) Mr. Bills reported to United States Treasury Dept., Bureau of Public Debt, in Washington that said Treasury Notes were missing.

Mr. Bills contacted the Police Dept., N.Y. City on August 24, 1967 with reference to the missing Treasury Department notes.

23. If such report was made by plaintiff, set forth the date or dates of all such reports, whether such reports were oral or in writing, the name, home address and capacity of the person or persons making such reports, the name and address of the person to whom such report was made, and if any of such reports were written, identify said writings and their location.

(Response) Mr. Bills, plaintiff's supervisor of claims, reported to United States Treasury Dept., Bureau of Public Debt, Washington, D.C., attention of H.M. Stephenson, Chief, Division of Loans and Currency in November,1966. Plaintiff believes the reports are there.

Mr. Bills orally reported to the New York City Police Dept. on August 24, 1967 to Detective Leahy, First Precint, Borough of Manhattan, New York City,

December 22, 1966 Bills to Mr. Stephenson,Treasury Dep't.
December 29, 1966 " " " " " "

PRETRIAL ORDER DATED MAY 10, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES FIDELITY & GUARANTY CO.,

Plaintiff,

-against-

ROYAL NATIONAL BANK OF NEW YORK, et al,

Defendants.

----------X

PRE-TRIAL ORDER

(Judge Gurfein)

68 Civ. 2054

1. Basis of jurisdiction: diversity and amount.

2. Prior decisions: defendant Frank Mazzochi, Jr., was severed from the case.

3. Facts not in dispute: The date certain treasury notes were placed in the possession of defendant ROYAL NATIONAL BANK by Frank Mazzochi, Jr.; the dates the proceeds of said notes were credited to the account of Frank Mazzochi, Jr., the dates and amounts that these proceeds were withdrawn in cash by Mazzochi. These transactions are set forth below in more detail. By setting forth the transactions below the parties are in no way agreeing that any legal conclusions may be drawn concerning the relationship among the various parties and the effect of that relationship from the mere facts that the transactions are set forth and that certain words are used in setting forth the transactions.

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DATE ROYAL OBTAINED POSSESSION	DESCRIPTION OF NOTES	DATE PROCEEDS DEPOSITED IN MAZZOCHI's ACCOUNT	AMOUNT OF DEPOSIT
August 4th 1966	One (1) U.S. Treasury 5% note due 11/15/70, S.A.C. 11/15/66, par value $10,000.00, bearing serial number 112255.	August 9, 1966	$10,015.49
August 5th, 1966	Seven (7) U.S. Treasury 5% notes, due 11/15/70, S.A.C. 11/15/66, total par value $60,000.00, bearing serial numbers, 117851, 112248, 112243, 111901, 111900, 3131 and 3024.	August 9, 1966	$60,092.93
August 9, 1966	Seven (7) U.S Treasury 5% notes, due 11/15/70, S.A.C. 11/15/66, total par value $70,000.00, bearing serial numbers 117186, 117182, 112307, 112241, and 112254.	August 10, 1966	$70,083.70
September 12, 1966	Twelve (12) U.S.Treasury 5% notes due 11/15/70, S.A.C. 11/15/66, total par value $72,000.00, bearing serial numbers 91369, 91365, 2155, 2114, 2995, 2827, 35053, 1925, 109164, 117183, 117186, and 117185.	September 20, 1966	$71,698.70

Mazzochi withdrew the proceeds of these notes in cash as follows:

Date	Amount
August 9, 1966	$35,000.00
August 10, 1966	$13,000.00
August 12, 1966	$10,000.00

Date	Amount
August 15, 1966	$10,000.00
August 16, 1966	$10,000.00
August 17, 1966	$10,000.00
August 18, 1966	$10,000.00
August 19, 1966	$10,000.00
August 22, 1966	$10,000.00
August 23, 1966	$10,000.00
August 29, 1966	$10,000.00
September 7, 1966	$ 500.00
September 21, 1966	$1,687.00
September 30, 1966	$10,000.00
October 3, 1966	$61,000.00
November 4, 1966	$ 700.00

Defendant Merrill Lynch bought all of the Treasury notes. On March 15, 1968, Frank Mazzochi was convicted in the Supreme Court of the State of New York, Bronx County, of criminally concealing and withholding stolen and wrongfully acquired property. Under date of February 17, 1967, W.E. Hutton and Company executed an assignment in writing in favor of plaintiff of all of its right, title and interest in certain securities listed therein.

4. Plaintiff's contentions:

(a) Both defendants are liable in conversion.

(b) Any alleged negligence of the plaintiff's assignor is not a defense to the action. Failing to use ordinary care to discover and prevent a theft does not work an estoppel against the plaintiff.

(c) The defendants failed to make proper and sufficient inquiry concerning the true ownership of the Treasury Notes.

(d) The defendants took and negotiated the Treasury Notes in bad faith. Under the law, bad faith may be found where there is willful ignorance.

(e) Defendant, Merrill Lynch, in failing to observe and comply with Rule 405 of the Rules of the New York Stock Exchange, the "know your customer rule" is liable to plaintiff.

(f) Plaintiff's failure to earlier discover that the Treasury Notes were stolen, does not exonerate defendants. Hutton owed no duty to defendants to make immediate discovery of the theft.

(g) Hutton's failure to make earlier discovery of the theft of the Treasury Notes, may not be held to mitigate damages.

Contentions of defendant Royal National Bank:

(a) Plaintiff must prove conversion of said notes.

(b) Royal National Bank was at all times acting as agent of Frank Mazzochi in respect of said notes.

(c) Royal National Bank at all times acted in good faith in respect of said notes.

(d) Royal National Bank was not, in August and September 1966, in the business of buying, selling or otherwise dealing with securities;

(e) Royal National Bank observed reasonable commercial standards in all of its conduct in respect of said notes;

(f) Royal National Bank made all inquiries and investigations which it was required to make, and in any event can be charged only with such information as a reasonable inquiry would have disclosed.

(g) The failure of plaintiff's assignor to have reported the alleged loss of said notes promptly upon the discovery of such alleged loss, precludes recovery against the defendants by virtue of estoppel, failure to mitigate damages and contributory negligence.

(h) When Royal National Bank delivered said notes to Merrill Lynch, it warranted to Merrill Lynch only its good faith and its authority.

Defendant Merrill Lynch's contentions:

(a) That the defendant MERRILL LYNCH did not take the Treasury Notes in bad faith. It took same without any notice of adverse claims against them and without knowledge of any defect in or to the said Notes. The defendant MERRILL LYNCH sold the said Treasury Notes and turned over full value to the defendant ROYAL NATIONAL BANK OF NEW YORK (hereinafter referred to as "ROYAL"), its customer. The defendant MERRILL LYNCH at all times was a bonafide dealer in the handling of said securities, which securities were bearer instruments and negotiable by delivery.

(b) That the securities referred to in the complaint were sold by ROYAL to defendant MERRILL LYNCH within The City of New York in the course of business of MERRILL LYNCH as a broker and dealer in securities.

(c) In the purchasing of the said securities by MERRILL LYNCH from ROYAL, MERRILL-LYNCH paid full value therefor and had no knowledge of any alleged irregularities pertaining to the said securities, and in conducting the said transaction MERRILL LYNCH complied with all reasonable commercial standards in dealing with the business of buying, selling, and otherwise dealing with securities.

(d) That subsequent to the purchase by MERRILL LYNCH from ROYAL of the said securities, this defendant sold the same in good faith, and in all aspects of the transaction herein, acted in good faith.

(e) That ROYAL, by selling the said securities to MERRILL LYNCH, represented to MERRILL LYNCH as a matter of law, that it had good title to the said securities and had no knowledge of any alleged irregularities pertaining to the said securities and pertaining to its ability to transfer good title thereto to MERRILL LYNCH.

(f) That MERRILL LYNCH purchased from ROYAL the securities referred to in the complaint and paid to ROYAL the full purchase price therefor, all without knowledge of any irregularities that would impair its title thereto, or impair its right to sell the securities. That ROYAL still retains the proceeds of

the said sale thus paid to it by MERRILL LYNCH.

(g) That MERRILL LYNCH is not liable to this plaintiff or to ROYAL under the provisions of Sections 8-301 etc. of the Uniform Commercial Code of the State of New York and/or by virtue of any of the laws of the State of New York or of the United States of America.

(h) That FRANK MAZZOCHI, JR., (hereinafter referred to as "MAZZOCHI") acquired these 26 Treasury Notes between May 15th and August 4th, 1966, which Notes were taken from the vaults of plaintiff's assignor, and after plaintiff's assignor acquired knowledge of these missing Notes from its vault, which upon information and belief, was August 5th, 1967, it took no steps to notify or put a stop order on the same with the New York Police Department, The Treasury Department, the Federal Reserve, and/or other governmental agencies having jurisdiction thereof, until many weeks after it knew of the disappearance of the said Notes, and facilitated the sale and transfer of the said Notes and the acquiring of the funds representing the sale of said Notes by MAZZOCHI to the detriment of this defendant.

(i) That ROYAL was a customer of MERRILL LYNCH since on or about 1965 and was highly regarded and was considered beyond question in its dealings with MERRILL LYNCH. That ROYAL would, from time to time, give instructions to MERRILL LYNCH to buy or sell government securities for its account, which orders were executed in accordance with ROYAL's directions. MERRILL LYNCH relied upon the honesty, reputation and integrity of ROYAL in accepting from it for sale for it the Notes mentioned in the plaintiff's complaint.

(j) That this defendant relies upon the principle of equitable estoppel to defeat the claim of the plaintiff and of the defendant ROYAL.

(k) That MAZZOCHI never dealt either face to face, in person, or through the mail or through any other media with the defendant MERRILL LYNCH, nor did MAZZOCHI have an account at any time with the defendant MERRILL LYNCH, nor was MAZZOCHI a customer of MERRILL LYNCH. That all statements, records and documents pertaining to the dealings in the receipt and sale of these Notes from ROYAL were between MERRILL LYNCH and ROYAL, and all confirmations and drafts issued by MERRILL LYNCH concerning this transaction were to ROYAL.

5. Trial by jury. Unanimous verdict required.

6. Issues: Conversion; good faith of the defendants; observance of reasonable commercial standards by the defendants; damages; Royal National Bank's agency; Whether Royal National Bank was in the business of buying, selling or otherwise dealing with securities; whether Royal National Bank made all inquiries and investigations required of it; and estoppel, failure to mitigate damages and contributory negligence.

7. See attached.

8. See attached.

9. (a) Expected trial time is three weeks.

(b) Royal National Bank and Merrill Lynch requests leave to amend its their answers to plead as affirmative defenses estoppel, failure to mitigate damages and contributory negligence. Plaintiff intends to oppose this request.

10. $217,000.00 plus interest, costs and disbursements.

SCHEDULE OF EXHIBITS

The following exhibits were attached to defendant, ROYAL'S answers to interrogatories:

1. Authorization, August 4, 1966: Exhibit A.
2. Authorization, August 5, 1966: Exhibit B.
3. Authorization, August 9, 1966: Exhibit C.
4. Authorization, September 12, 1966: Exhibit D.
5. Transmittal form, August 5, 1966: Exhibit E.
6. Confirmation, August 5, 1966: Exhibit F.
7. Transmittal form, August 5, 1966: Exhibit G.
8. Confirmation, August 5, 1966: Exhibit H.
9. Transmittal, August 10, 1966: Exhibit I.
10. Confirmation, August 9, 1966: Exhibit J.
11. Transmittal form, September 12, 1966: Exhibit K.
12. Confirmation, September 12, 1966: Exhibit L.
13. Credit, August 5, 1966: Exhibit M.
14. Credit, August 5, 1966: Exhibit N.
15. Credit, August 8, 1966: Exhibit O.
16. Credit, August 9, 1966: Exhibit P.
17. Credit, September 12, 1966: Exhibit Q.
18. Bank Statement, August 31, 1966: Exhibit R.
19. Bank Statement, September 30, 1966: Exhibit S.
20. Bank Statement, October 31, 1966: Exhibit T.
21. Account Card, Mutual Credit Union, February 10, 1965: Exhibit U.
22. Account Card Mutual Credit Union, January 19, 1966: Exhibit V.

SCHEDULE OF WITNESSES

It is expected that some or all of these witnesses will testify. The parties reserve the right to submit the names of additional witnesses, including expert witnesses:

James Barbi

Tully Prince

Irving H. Stolz

William Goldfine

Jack Gutstein

Mrs. Rose Moscatello

Mary Leah Pryor

Angelo D. Dellatte

Robert I. Rayner

Edward T. McGraw

Louis M. D'Agostino

Frank Mazzochi, Jr.

Anna Mazzochi

Arnold Dutchen

William Carter

James Hutton

Theodore Landberg

Richard Mazzochi

William Quinn

Leonard E. Yoswein

Thomas Rockafeller

Rudolph Galli

Howard Breslow

Conrad Hoffman

Howard C. Ludlow

R. G. Hawthorne

Bernard Holtshauer

Peter Walter

Rudolph J. Santoro

Wallace S. Nathan

Stephen Weis

Frank Mazzochi, Senior

Sheldon Zalkin

James E. Bills

Det. Hanson

Samuel Komoroff

Det. Joseph M. Leahy

Robert Mazzochi

Lawrence Rothberg

Employees of Bankers Trust Company

Anthony Cassesse

SCHEDULE OF EXHIBITS

PAGE 2

23. Bank Account Agreement, April 27, 1965: Exhibit W.

24. Bank Account Agreement, January 19, 1966: Exhibit X.

25. Interview sheet for new account: Exhibit Y.

26. Bank Account Agreement, Unit Repairs, Inc., August 9, 1965: Exhibit Z.

27. Bank Account Agreement, Unit Home Repairs, August 27, 1965: Exhibit AA.

28. Bank Account Agreement, Unit Home Repairs, November 1, 1965: Exhibit BB.

29. Interview sheet: Exhibit CC.

30. Business certificate for partners: Exhibit DD.

31. Co-partnership bank account agreement: Exhibit EE.

32. Interview sheet: Exhibit FF.

33. Bank account card Finnog Ltd.; December 24, 1965: Exhibit GG.

34. Bank account agreement, Finnog Ltd.: Exhibit HH.

35. Bank account card, Mutual Credit Union, October 13, 1951: Exhibit II.

36. Interview sheet: Exhibit JJ.

37. Bank account card, Frank Mazzochi, Jr., August 9, 1966: Exhibit KK.

38. Bank statement of Mazzochi, November 30, 1966: Exhibit LL.

39. Bank statement of Mazzochi, December 5, 1966: Exhibit MM.

40. Letter, Hoffmann to Federal Reserve Bank, September 21, 1966: Exhibit NN.

41. Report of currency transactions, August 9th through August 29, 1966: Exhibit OO.

42. Report of currency transactions, October 3rd, and 4th, 1966: Exhibit PP.

43. Mazzochi affidavit, September 20, 1966: Exhibit QQ.

44. Letter, Royal Bank to Stolz, September 21, 1966: Exhibit RR.

45. Memo from McCraw to Walter, September 15, 1966: Exhibit SS.

SCHEDULE OF EXHIBITS

PAGE 3

The following documents were marked at depositions

Deposition of U. S. F. & G. September 9, 1969:

46. Letter from Hutton to Kreidler Agency, September 28, 1966: Exhibit 1.

47. Memo from O'Halloran, September 29, 1966: Exhibit 2A through 2D. with attachments

48. Letter, Treasury Department to Hutton: Exhibit 3.

49. Assignment, Hutton to U.S.F.&G.: Exhibit 4.

50. Letter, January 9, 1967, from Rockafeller: Exhibit 5.

51. Letter from Rockafeller, January 25, 1967: Exhibit 6.

52. Letter from Rockafeller, February 16, 1967: Exhibit 7.

53. Galli affidavit: Exhibit 7A.

54. Letter from Rockafeller, February 17, 1967: Exhibit 8.

55. Letter, Bills to Hutton, December 8, 1966: Exhibit 9.

56. Letter, Bills to Hutton, November 3, 1966: Exhibit 10.

57. Hutton confirmation slip: Exhibit 11.

58. Letter, Bills to Hutton, January 17, 1967: Exhibit 12.

59. Letter, Bills to Hutton, February 13, 1967: Exhibit 13.

Deposition of Mrs. Rose Moscatello
September 17, 1969

60. Two sheets showing the photoprint of check by Frank Mazzochi, Jr. on August 9, 1966 for $10,000 together with back of check: Exhibit 6.

61. Photoprint of check in the amount of $25,000 payable to cash signed by Frank Mazzochi, consisting of two pages showing the front and back of check: Exhibit 7.

62. Group of checks in varying amounts and varying dates: Exhibit 8-21.

SCHEDULE OF EXHIBITS

PAGE 4.

63. Page No. 211 of transcript before Honorable Francis T. Murphy, Jr., in the Supreme Court, Bronx County, in action entitled "The People of the State of New York against Frank Mazzochi, Jr.". Exhibit 24.

Deposition of Angelo D. Dellatte
September 17, 1969

64. Index card six inches by four inches entitled "Bank Account agreement and Authorized Signatures of Mutual Credit Union", Dated September 15, 1967: Exhibit 27.

65. Document entitled "Certificate to Incorporate, Banking Resolutions and Bank Account Agreement, " dated March 29, 1967, signed by secretary of Mutual Credit Union: Exhibit 30.

66. Nine signature cards variously dated. Exhibit A.

Deposition of Peter Walter
September 12, 1969

67. Three pages stapled together, first page being reproduced copy of Exhibit 46, second page bearing printed words at top "Herbert Bacher," and third page containing handwriting and bearing numbers 264-7204 and words "Mr. Maura--Secret Service,". Exhibit 47A-47C.

68. Wheeldex card reading in part "FBI 535-7700...," Exhibit 48.

Deposition ofAngelo D. Dellatte
September 18, 1969

69. Document headed "Royal National Bank of New York, Statement of Condition, June 30, 1969,". Exhibit 43.

70. Corporate Resolution of Mutual Credit Union dated November 29, 1967. Exhibit 44.

71. Corporate Resolution of Mutual Credit Union dated July 10, 1968: Exhibit 45.

Deposition of Edward I. McGraw
October 27, 1969

72. Credit file of Mutual Credit Union for 1965 and 1966. Exhibit 55.

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SCHEDULE OF EXHIBITS

PAGE 5

Deposition of Wallace S. Nathan
February 17, 1971

73. Letter dated January 17, 1968 from the regional administrator of national bank, UnitedStates Treasury to Samuel Komoroff. Exhibit 2.

74. Photoprint of a letter sent to the office of the controller of the currency by Mr. Komoroff dated January 10, 1968. Exhibit 3.

75. Transcript of telegram from Deputy Controller Watson to Wallace S. Nathan Regional Counsel. Exhibit 4.

Deposition of Louis M. D'Agostino
March 16, 1971

76. Documents concerning Frank Mazzochi, Jr. Exhibits 1A thru 1-I.

77. Documents concerning Frank Mazzochi, Sr. Exhibits 2-A thru 2-D.

78. Documents concerning Robert Mazzochi. Exhibits 3-A thru 3-C.

79. Document concerning Anna Mazzochi. Exhibit 4.

80. Documents concerning Richard Mazzochi. Exhibits 5-A thru 5-D.

81. Document concerning Anna and Robert Mazzochi. Exhibit 6.

Deposition of Stephen Weis
March 23, 1971.

82. Copy of letter dated October 3, 1969, consisting of two pages, from Mr. Stevenson to Mr. Komoroff. Exhibit 1.

Deposition of Frank Mazzochi, Senior
July 28, 1971.

83. Four pictures of a building. Exhibits 1 thru 4.

84. Three pictures of block in Williamsburg. Exhibits 5 thru 7.

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SCHEDULE OF EXHIBITS

PAGE 6

Hawthorne deposition, May 6, 1971.

85. Letter dated March 29, 1971 from Hawthorne, Exhibit 2.

86 to 91. Certified copies of documents from the Commissioner of Public Debt; Exhibits 3-9.

92. Letter, October 3, 1969 from Stevenson to Komoroff; Exhibit 9.

93. Letter, January 17, 1968, Nathan to Bureau of Public Debt; Exhibit 10.

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94 Minutes of the proceedings of the trial and sentence of FRANK MAZZOCHI, JR. in the Supreme Court, Bronx County, Index Number 2436/1967.

Dellatte deposition September 18, 1969

Mary Leah Pryor and Bernard Holtschaner depositions

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95. Thirty-four documents from the files of the Bureau of the Public Debt, sent to the attorney for the plaintiff shortly after the deposition of R. G. Hawthorne on May 6, 1971 by Mr. Milton Blair, attorney for Mr. Hawthorne, and forwarded by the attorney for the plaintiff to the attorneys for defendant Royal National Bank with letter dated May 21, 1971.

96. Signature card dated July 7, 1966 for Unit Home Repairs, Inc. (Exhibit 35 at Dellatte deposition on September 17, 1969).

97. Claim file established and maintained by James E.Bills on behalf of plaintiff relating to the claim made by W.E. Hutton and Company in connection with the alleged loss of the notes which are the subject matter of this action, including, but not limited to, memoranda prepared by Mr. Bills dated on or about October 18, 1966, November 2, 1966, November 14, 1966 and December 22, 1966.

98. United States Treasury Department Circular No. 300 dated December 23, 1964 (Exhibit 2 at Weis deposition on March 23, 1971).

99. Letter dated January 17, 1968 to Mr. Samuel Komoroff from Wallace S. Nathan (Exhibit 11 at Hawthorne deposition on May 6, 1971).

SCHEDULE OF EXHIBITS

PAGE 7

100. Letter dated February 5, 1968 to Mr. Samuel Komoroff from H. M. Stephenson (Exhibit 12 at Hawthorne deposition on May 6, 1971).

101. Listing of Treasury Bonds, Treasury Notes and Treasury Certificates of Indebtedness outstanding on August 31, 1966 (Exhibit A at Pryor deposition on May 6, 1971).

102. Auditor's copy of credit advice dated September 12,1966 (Exhibit 50e at Kayner deposition on October 14, 1969).

103. Records of Bankers Trust Company reflecting access in 1966 to the vault where the notes were allegedly kept by W. E. Hutton and Company.

104. Four receipts from Royal to Frank Mazzochi, Jr.,dated respectively August 4, 1966, August 5, 1966, August 9, 1966 and September 12, 1966.

105. Records in the files of defendant Royal National Bank of New York and of defendant Merrill Lynch, Pierce, Fenner & Smith, Inc.

SCHEDULE OF WITNESSES

PAGE 2

Members and Directors of Mutual Credit Union

Partners of W. E. Hutton & Company

Personnel of Merrill Lynch.

Personnel of Treasury Department, and other government agencies.
Experts of N.Y. Stock Exchange and other experts.

AGREED TO:

JULIEN, BLITZ & SCHLESINGER, P. C.

BY: John Allen Epstein
Attorneys for Plaintiff

HART & HUME, ESQS.

BY: Hart + Hume William Hart
Attorneys for Royal National Bank

KONHEIM, HALPERN & BLEIWAS, ESQS.

BY: /s/ Victor Bleiwas
Attorneys for Defendant, Merrill, Lynch, Pierce, Fenner & Smith.

May 10, 1974

So ordered:

U.S.D.J.

TRANSCRIPT OF TRIAL HELD ON AUGUST 6, 7, 8 & 11, 1975 BEFORE THE HONORABLE HENRY F. WERKER (Filed September 16, 1975) JA60

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES FIDELITY & GUARANTY CO., :

Plaintiff, :

vs. :

ROYAL NATIONAL BANK OF NEW YORK, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., : 68 Civ. 2054

Defendants. :

----------x

Before:

HON. HENRY F. WERKER,

District Judge.

August 6, 1975
10 a.m.

APPEARANCES:

JULIEN & SCHLESINGER, ESQS.,
Attorneys for United States Fidelity & Guaranty Co.
BY: ALFRED S. JULIEN, ESQ.
STUART A. SCHLESINGER, ESQ.
DAVID JAROSLAWICZ, ESQ., of counsel.

HART & HUME, ESQS.,
Attorneys for Royal National Bank of New York
BY: WILLIAM HART, ESQ.
ROBERT BEAU LEONARD, ESQ., of counsel.

KONHEIM, HALPERN & BLEIWAS, ESQS.,
Attorneys for Merrill Lynch
BY: SAMUEL HALPERN, ESQ.
VICTOR BLEIWAS, ESQ., of counsel.

- - -

MR. JULIEN: Ready.

MR. HART: Ready.

MR. HALPERN: Ready.

THE COURT: Motions.

MR. HART: Your Honor, at the outset, I would like to move to practice before the bar of this Court Mr. Robert Beau Leonard, an associate of my firm. Mr. Leonard is admitted to the bar of the state of Louisiana and of the bar of Washington, D. C. He has passed the bar examination of the State of New York and is awaiting admission to the bar of this state. I respectfully move his admission.

THE COURT: Motion granted.

MR. HART: Thank you, your Honor.

Next I would like to move for leave to amend the answer of the defendant Royal National Bank to add three affirmative defenses. Those affirmative defenses are estoppel, failure to mitigate damages, and contributory negligence.

The defenses are based upon the failure and refusal of W. E. Hutton & Company, the assignor of the plaintiff in this action, to have reported to the proper authorities the loss of the treasury notes which are the subject of this action promptly upon discovery

of such loss.

The reason that those defenses weren't contained in the original Answer of the defendant was that the facts giving rise to those defenses didn't become known until discovery began in the action and we took the examination of Mr. James Bills, who was the claims examiner for the plaintiff in connection with this action.

It was testimony which revealed the conduct of W. E. Hutton which formed the basis of these defenses. Our intention to add these defenses has been known to counsel for the plaintiff since that time.

The reason that the application was not made on formal papers was that the examination of Mr. Bills was not completed but was adjourned and before it could be resumed, Mr. Bills died.

We then continued discovery for some time but the defendants deferred their continued discovery in order to permit the plaintiff to complete its discovery.

While discovery was still pending, and while further depositionswere actually scheduled for a day certain, Judge Sylvester Ryan, at a pretrial conference, ordered an end to all discovery and all depositions and directed the immediate filing of a note of issue.

At that point it seemed appropriate to make

the motion for an amendment of the pleadings to the judge to whom the case was assigned rather than to the motion part, and we have called to the attention of the various judges which the file would reflect have been assigned to this case from time to time our intention to make such a motion.

On each occasion we were advised to defer the motion until various other matters were taken care of, and until this time, although our intention has been known from the beginning and our intention is included in the pretrial order, no Court has passed upon our application.

I call to your attention that under the Federal Rules of Civil Procedure leave to amend pleadings is to be freely granted and, in fact, leave to amend pleadings can be granted after the trial to conform at the evidence.

Accordingly, I respectfully request that the answer of defendant Royal National Bank be deemed amended to contain those three affirmative defenses which I have described.

THE COURT: Mr. Julien?

MR. JULIEN: I heard him say estoppel, negligence and what?

MR. HART: Failure to mitigate damages.

MR. JULIEN: Failure to mitigate damages.

Now, if your Honor please, this motion not only comes too late, but is inappropriate to this case, and is fundamentally deficient because we have never been served with any motion papers setting forth this proposed amended answer.

All I hear now is some categories stated, three of them, no form of pleading which we can pass upon as to its sufficiency in law, applicability to our case as proposed to you.

Now, this case is pending, as your Honor knows, for a considerable period of time, and if they had intended to proceed with respect to amending their pleading, the least they should have done is to serve a proposed amended pleading at sometime during this procedure and say "This is how we are going to move to amend at the trial." They haven't done that.

All I know about the contents of the pleadings are three words that he mentioned with respect to three affirmative defenses, and I don't see how either the Court or his opponent is in a position to pass upon the adequacy of pleadings under those circumstances.

What facts does he claim spell out estoppel? What facts does he claim spell out negligence? And in what

respect does he claim that the plaintiff has failed to mitigate its damages?

Now, so far as negligence is concerned, or estoppel is concerned, I think the law is clear -- and we have briefed that for your Honor -- that the conduct on the part of the plaintiff relies heavily on the case of Hartford v. Walston & Company at 21 New York 2d 219, Court of Appeals, that "Any alleged negligence on the part of the owner of the property is not available as a defense in conversion actions."

"I lost my watch," or if it's stolen from me, nobody can say "You should have had it tied around your wrist." If money is stolen from my wallet, nobody can say "You should have buttoned your wallet up." That isn't the kind of defense that was entertained in this kind of case.

So I say that because of this delay, not in saying that they intend to move, but in showing how they intend to move by serving appropriate papers at some stage, they are barred from making this application now.

And further, I say that I can only treat with only one category and the category is just not available in cases of this type.

MR. HART: May I be heard, your Honor?

THE COURT: I would prefer not. I would prefer to hear witnesses. I'm going to reserve with respect to the motion.

MR. HALPERN: May I, for the record, also move to amend the cross complaint which we have against the Royal Bank to contain those three defenses.

I would like to state one other thing for the record: Mr. Julien has brought up the ca e of Walston & Company, a case which deals with not a negotiable instrument but deals with a registered bond that was brought in by somebody who came in off the street. I say there is no comparison between the two cases.

MR. JULIEN: I just can't leave that kind of statement alone.

In the first place, I don't understand Mr. Halpern's moving on his cross complaint. I understand he is not moving with respect to his Answer to us on these defenses, so I will leave the record in that stage.

But conversion is conversion. It doesn't matter whether you are converting a dollar or you are converting an automobile. The point is that the law of conversion is that the convertee's action can't be used as a defense by those who have aided or abetted

in the conversion, and that's all there is to it. It doesn't matter what the object converted is.

No case has ever drawn the distinction that my learned friend is attempting to draw here.

MR. HALPERN: I might have made an error by saying I move it only on the cross complaint. I also move it on the direct defense as against the plaintiff.

MR. HART: Your Honor is not taking argument on the law relating to these defenses at this point, is that correct?

THE COURT: Yes, that's correct. You will all have adequate opportunity after we get the evidence.

All right, Mr. Julien.

MR. JULIEN: Your Honor, I am going to ask that the witnesses in the cause on trial be excluded excepting I'm going to ask Mr. Santoro to remain since he's my first witness.

MR. HALPERN: I have no objection.

MR. HART: I have no objection.

THE COURT: All the witnesses who are not going to be heard at this moment, and that excludes everybody but Mr. Santoro, must leave the courtroom at this time.

R U D O L P H S A N T O R O , called as a witness by the plaintiff, being first duly sworn, testified as follows:

MR. JULIEN: Before proceeding with this witness, your Honor, I am going to ask the Court to judicially notice the rule, rule 405 of the rules of the New York Stock Exchange Incorporated, rule 405, which reads -- I am not sure you have a copy of this, your Honor, so I will just read it into the record -- "Every member organization is required through a general partner, a principal executive officer, or a person or persons designated under the provisions of rule 324(b)(1)(2) subdivision 1, to use due diligence to learn the essential facts relative to every customer, every order, every cash or marginal account accepted or carried by such organization, and every person holding power of attorney over any account accepted or carried by such organization."

Items 2 and 3 could be briefed later and aren't immediately essential.

MR. HART: Of course I cannot object to the Court taking judicial notice of anything but I would like to object to any reference being made to rule 405 of the New York Stock Exchange with respect to defendant Royal National Bank because the defendant Royal National

Bank is not a member organiztaion and therefore the rule, by its terms, doesn't apply to the Royal National Bank.

MR. JULIEN: That's not the point with respect to Royal. The first point is, of course, that it bears upon the conduct.

THE COURT: It has no application to Royal. Royal is not a member.

MR. JULIEN: In this respect it may, your Honor, not as a member falling distinctly within its provision but this is one of the things which the Court may well consider when it comes to the question of commercial practices within the commercial community, as to which you will be receiving considerable proof later on.

MR. HART: I would simply observe that the very fact that there is a rule applicable to members of the stock exchange and not to banks would indicate that that rule is not intended to apply to banks, and I again renew my objection to any reference to that rule being made with respect to Royal National.

THE COURT: Your objection is on the record.

MR. JULIEN: All right.

DIRECT EXAMINATION

BY MR. JULIEN:

Q Mr. Santoro, what do you do at the present

time?

A I am a vice president with the Sterling National Bank at 540 Madison Avenue, in charge of the operations of the branch.

Q I am going to request thatyou try to keep your voice up a little bit so that these counsel and myself can hear your answer.

A Yes.

MR. HART: This gentleman is Irving Stolz and he is an attorney, and I believe he was subpoenaed as a witness, but he whispered to me when he arrived that he spoke to your clerk.

MR. JULIEN: Don't make a long story. We'll take care of it. We will make the proper arrangements.

Q Back in 1966, Mr. Santoro, you had some position with the Royal National Bank?

A That is correct.

Q And what was your position, in general, at that time in 1966?

A I was a clerk in the credit department.

Q Now, are you one of the men at Royal National Bank who had the dealings referrable to the treasury notes presented by one Frank Massochi, Jr.?

MR. HART: Objection. I object to any testimony in this action being given with respect to any treasury notes unless the plaintiff first proves that it had some right to possession or ownership of those notes in order to establish its basis for presenting a claim in this action.

MR. JULIEN: The order of proof is entirely within the plaintiff's control.

MR. HART: Until such time, your Honor, I believe any testimony on that is completely irrelevant.

THE COURT: No. I'm not going to take the objection. It's overruled.

MR. HALPERN: May I join in that objection?

THE COURT: For the record, Mr. Halpern,you may.

MR. JULIEN: Do you have my question in mind?

THE WITNESS: Yes, right.

Q Please, may I have an answer?

A Well, would you rephrase it?

(Question read)

A That is correct.

Q And which bank were you then affiliated with, I mean which branch?

A Royal National Bank, East 149th Street office.

Q And at the time of the first presentation of any notes by Mr. Mazzochi, what position were you occupying either on a permanent or a temporary basis at that time?

A I was a clerk in the loan department.

Q Weren't you temporarily assigned at thattime to a more important position?

MR. HALPERN: I object to leading questions.

MR. JULIEN: This, if your Honor please, is under the rules of --

THE COURT: Now, please, gentlemen, we are going to get this tried. As far as I am concerned, this man at that time was the employee of the Royal Bank, he can go as though on cross-examination. Go, Mr. Julien, please.

MR. HART: Your Honor, in order to avoid any further interruptions, may I have a continuing objection to any testimony regarding any treasury notes including any numbers of treasury notes or do you want me to make my objections --

THE COURT: You have got a continuing objection.

MR. HART: Thank you, your Honor.

THE COURT: And you have a continuing

objection.

MR. HALPERN: Thank you, sir. You meaning Mr. Halpern?

THE COURT: Mr. Halpern, you have a continuing objection.

Q At that time, when the first of these notes were presented, wasn't your position acting head of the loan department of that branch of the Royal National Bank?

A That is correct.

Q Fine. And, as acting head of the loan department your duties then were what?

A Well, supervising the general overall running of the department. The loan department handled the processing of all loans, notes, payments on notes, buying and selling of securities, and various other functions.

Q So that at that time you were in charge of or acting head of the buying and selling of securities, right?

A That is correct.

Q And included in that area of securities would be treasury notes?

A That is correct.

Q And I think we have all agreed on the

definition of treasury notes, we won't need that, but, now, on the occasion of the first $10,000 note --

MR.HART: Your Honor, there has been no evidence about a presentation. Can we have dates in order to give the witness a proper perspective?

MR. JULIEN: Judge, I am trying to save time. I didn't think I have to prove facts which have already been admitted. The dates, the presentation, and the amounts are all in order. If I'm going to have to do that then we have wasted an awful lot of time.

MR. HART: My point is this: These transactions took place nine years ago. The witness' recollection at best --

MR. JULIEN: Just a minute, please.

Now, your Honor, I don't want him to be suggesting anything to the witness about recollection when he hasn't even said a word about not knowing anything. The purpose of a non-jury trial, Judge, and I think this is what motivated all of us to do this is to do away with this kind of peripheral nonsense and get on with the meat ofthe case. Now don't make suggestions.

THE COURT: I am waiting for us to get at the meat of it.

Q Now, when you were the acting head of that

department on the presentation of the first $10,000 treasury note,did you know Frank Mazzochi, Jr.?

A I didn't know him by name but I had seen him in the bank previously.

Q Well, had you ever had a transaction at the bank, in which you dealt with Mr. Mazzochi up to that time?

A None whatsoever.

Q All you knew about him then was that this was a face that you had seen?

A That is correct.

Q And at that time you saw, of course, many faces of people who came into the bank?

A That is correct.

Q And their relationship, what their standing was, or with respect to what they came into the bank for, you would not necessarily notice unless you dealt with them or inquired of them, is that true?

A That is correct.

Q Now, of course you have learned a great deal more about these transactions and Mr. Mazzochi since the occasion when these treasury notes were taken in by the bank, isn't that so?

A When you say learned --

Q You have learned more about it since these events because you have testified in the criminal case, haven't you?

A That is correct.

MR. HART: Your Honor, I object to any reference to a criminal action in the record of this proceeding.

MR. JULIEN: That too is conceded in the order. I don't understand these people.

MR. HART: It is conceded as a fact but not as something to be admitted in evidence in this action.

THE COURT: That is a distinction which the Court will not recognize.

MR. HART: I believe it's immaterial to this proceeding, your Honor, and incompetent.

THE COURT: All right. Overruled.

Q So that please bear in mind that the questions that I am about to ask you deal with your knowledge as you knew when you were negotiating these treasury notes back in '66. I'm not inquiring as to what you may have learned thereafter, is that clear?

A That is correct.

MR. HART: The word "negotiating" is simply not an applicable word and I must object to it. There

was no negotiation of these notes by the bank.

THE COURT: I am going to let him ask his questions the way he wants to. Characterize them the way he wants to characterize them. Please, we are at a non-jury trial. I know he is not going to persuade me of anything by using certain words. All right.

Q Now, at the time you were first presented with a $10,000 treasury note, right?

A That is correct.

Q And when you were presented with this note, did this man Mazzochi come to the place where you were stationed in the bank?

A Yes, he did.

Q And where was that place? Was it a cage, was it a desk, which?

A I guess you would call it a cage. The loan department was situated towards the back of the bank. It would be something similar to the jury box here. There was a counter running across. We were separated from the customers by that counter.

Q But it was not really a cage, just a separation by a partition similar to the jury rail?

A Right. That's correct.

Q All right.

Now, this was a younqish sort of man, about 25 years of aqe?

A Yes. To the best of my recollection, he was in his late twenties.

Q All right. And when he presented this treasury note to you in the sum of $10,000, he told you he wanted to have it cashed?

MR. HALPERN: I object to that. Let's qet the conversation.

MR. JULIEN: I am entitled to lead him. The rules of July 1 say I am entitled to lead him. What is the matter with you?

MR. HALPERN: Just a moment. Don't address yourself to me. I am makinq an objection to the Court.

THE COURT: Your objection is overruled.

Q Do you remember my question?

A Yes, I do.

Q What is your answer?

A He presented the note to me and he said he wanted to sell the treasury bill.

Q You said notes, but I suppose you mean just a note, one note?

A Yes. Right.

Q Now, had you, up to thattime, at the Bronx

branch of the Royal National Bank, handled any treasury note of that size?

A I honestly don't remember. There might have been treasury bills that I had sold in the six months I was in the department but I don't recollect any size or demonination.

Q Well, let's put it this way: How long had you been the acting head of the department which you described?

A I believe it was about one week since Mr. Landberg had either taken ill or was on vacation, I don't remember which.

Q Mr. Landberg was the man who personally occupied that position at that time.

A Now, during that one week when you were in charge, had you handled any kind of treasury notes at all?

A No, not that I recall.

Q Now, when Mazzochi came to you with the first note, did he identify himself to you in any fashion?

A To the best of my knowledge, he stated that he had an account with the bank when he wanted to sell the treasury bill through my department.

Q Did he tell you he had an account of his own

with the bank?

A No. He just stated he had an account. He didn't make any reference as to whether it was business, personal, or what.

Q Well, did you ask him?

A No, I didn't.

Q "What was the nature of your account?"

A I didn't.

Q You knew even from your experience then that an account would either be a personal one or it could be one in which this man has nothing but a signature interest, like a business or a corporation?

A That is correct.

Q Not involving his own credit, his own standing, or anything like that?

A That is correct.

Q You made no inquiry of any kind?

A None whatsoever.

Q Was he accompanied by anyone when he came to you?

A No, he was alone.

Q Now, would it be fair to say that up to that time, having filled in for this position as acting head of that securities and loan department, that this was the only

transaction of that kind that you had been called upon to deal with?

A That is correct.

Q Now, did you seek the help of anyone else connected with the bank?

A No. In a case like that --

Q No, no. Did you seek the help of anyone else?

A Yes.

Q Who?

A I referred him out to one of our credit officers.

Q And his name, please?

A I believe it was Robert Kayner was the officer at that time.

Q You gave Mr. Kayner's position as what? One of the credit men.

A He was a credit officer located at that branch.

Q The credit officer?

A Yes.

Q There was more than one?

A That is correct.

Q He was the one on duty at that time?

A No. I believe there were three gentlemen out

on the platform of the credit platform at that time.

Q Do you have the names of the other two, if you recall them?

A Edward McGraw and Jack Gutstein. He was the vice president dnd branch manager.

Q And Mr. Gutstein was vice president, did you say?

A And branch manager. There might have been one other officer there but I'm not sure. I don't recall.

Q Well, we aretalking about the credit men?

A Right.

Q The credit men occupy a position where part of their job is to check credit, is that right?

A That is correct. They are loaning officers.

Q By the way, did you check the credit of Mazzochi back then?

A No, I didn't.

Q There was available to you, was there not, the means to check any of the accounts with which he might have been peripherally or directly interested?

A The other means were at my disposal.

Q You didn't do it?

A It wasn't my job.

Q My question is, did you do it?

A No.

Q Now, did you take this gentleman over to the credit officer yourself, or did you send him over? How was that handled?

A To the best of my recollection, when Mr. Mazzochi presented the bill that he wanted to sell, I informed him that in order for me to handle this transaction I would have to have the approval of an officer, and I believe I had one of the platform guards take him out to the platform to one of the officers, I don't recall which one.

Q But you are clear it was a credit officer?

A , definitely.

Q you speak to Mr. Kayner yourself?

A No, I didn't.

Q Did you send the treasury note along to Mr. Kaynor or did you retain it yourself?

A I don't remember.

Q Well --

A I believe normally in that case the gentleman would take the bill out to the officer so he could see what he was approving for sale as well as discuss it with the customer, but I don't remember whether I did or didn't.

Q Well, we'll check back in a little while but it's my recollection that you said that on previous occasions that you retained the note and you just sent the man over to Mr. Kayner?

A It could very well be. I honestly don't remember.

Q Does that refresh your recollection to any extent?

A If that's what I said in my prior testimony which was much earlier than now, I would imagine that that is the way it was.

Q Well, this prior testimony, you had an opportunity to review it very recently, haven't you?

A I did.

Q Mr. Hart came to your office?

A Correct.

Q And showed you your prior testimony?

A That is correct.

Q As recently as this week?

A That is correct.

Q Have you discussed this affair with Mr. Kayner since you have been subpoenaed to come here?

A We have talked it in general but we have made reference to the case, but I haven't discussed any aspects

of it whether I sent any bill out to him or what the procedures were, no.

Q Where did you have that discussion with Mr. Kayner, as a general discussion? Where was that?

A Yesterday, sitting in the back of the court-room.

Q I see. Have you had an occasion to read Mr. Kayner's testimony given in this case?

A I have. I have all the depositions at home that cover all the officers of Royal.

Q All the officers of Royal?

A Right.

Q Including Kayner?

A That is correct.

Q Was Kayner an officer at that time as well as a credit man?

A Well, all credit men were officers.

Q And just as credit men or did they have an additional designation?

A Well, some would be vice presidents, assistant vice presidents. I just referred to them as credit officers, but they had different titles according to rank and senior.

Q How about Kayner?

A Kayner was an assistant cashier.

Q Did you read that in pursuing or reviewing these depositions, did you read that Kayner said that you didn't send the note over to him, you just sent the man over to him?

MR. HALPERN: Objection. Reviewing some other witness' testimony.

Q Did you read it and did it refresh your recollection?

THE COURT: I will permit you to ask him whether he read it.

MR. JULIEN: Yes.

THE COURT: Did you read that particular statement?

THE WITNESS: I read all the testimony but I read them very briefly. I didn't thoroughly digest them and I didn't memorize them.

MR. HART: Your Honor, I think the witness may be confused. I don't believe he has the transcript of the deposition in front of him.

MR. JULIEN: Please. I don't understand this kind of thing. If it were before a jury it would be absolutely improper but even non-jury you shouldn't be saying anything to this witness. Don't tell him

what you believe he means or what he says.

THE COURT: You will have an opportunity.

MR. HART: All right. I just thought --

THE COURT: Next question.

Q From the examination before trial dated October 20, 1969, when you were examined, page 15, weren't you asked this question -- when you were examined with respect to this transaction on October 20, 1969, did you give the following answers to the following questions:

"Q What did he have with him?

"A I believe it was a $10,000 treasury bill. He said he wanted to sell."

Do you remember giving that answer?

A That is correct.

Q Line 12:

"Q What did you do?

"A I asked him if he was a customer of the bank. If he had an account with us. And he answered that he was an officer of the Mutual Credit Union, and I told him it would have to be okayed by an officer before I made any sale. I took the treasury bill from him and held on to it and referred him out to an officer on the platform."

A You answered your own question.

Q Now I want you to answer it.

A If that's what I stated then, yes. I don't remember at this time.

Q But that was a true statement?

A That was a true statement.

Q All right.

MR. JULIEN: Under the new rules, your Honor, which I know your Honor is familiar with, this kind of testimony elicited from a witness, when he is confronted with previous testimony, becomes testimony in chief now as well.

THE COURT: I have no problem with that.

MR. JULIEN: I'm sure. Please forgive me. I know the rules are new, tha's all.

Q So that according to this testimony, you held on to the note; you just sent a customer down, is that right?

A That is correct.

Q So that while this customer was talking to the credit officer, you weren't present during that conversation?

A No, I was not.

Q And were you doing something else with respect to the bill while that conversation was going on?

A No, I was not doing anything.

Q Just holding?

A Just holding.

Q So far as the bill, its number, its due date, its coupon material, that was in your hand while this man was talking to the credit officer?

A That is correct.

THE COURT: That's about thefourth time you have asked the same question. I'm going to ask you not to be repetitious.

MR. JULIEN: Oh, sure. I have no desire to be. It was unintentional.

Q Now, did Mr. Kayner come back to your desk or did you go to his desk at any time before finally accepting this bill?

THE COURT: You mean Mr. Mazzochi?

MR. JULIEN: No, I meant Mr. Kayner.

A I don't remember whether he came back to my platform there or he called me on the phone. I don't remember that. But either way, he gave me verbal instructions on that first transaction.

Q And by verbal instructions you mean he said that you could accept this bill and sell it, is that correct?

A That is correct.

Q And up to the time -- withdrawn.

When he gave you that verbal okay, you still had that bill, right?

A That is correct.

Q You had not relinquished possession of it?

Q I had not.

Q To the best of your recollection, he had not come and looked at the bill himself?

A Not that I recall.

Q All right.

Now, did you get any kind of written authorization from the credit man, Kayner?

A After the transaction was completed and we typed up our confirmation orders and Mr. Kayner signed the official purchase order we put through, and that's what we keep for our personal records.

Q Now, Mr. Kayner, during this period between your first receiving the bill and holding it until he had passed upon Mazzochi, he asked you for no information, did he?

A No, he didn't.

Q And you gave him none?

A I gave him none.

Q Now, according to this answer which you gave and which I read to his Honor a few moments ago, the response to your question about are you a customer, was that he was an officer of a mutual credit union, right?

A That is correct.

Q You hadn't checked that out before you accepted the bill?

A No, I didn't check that out.

Q You didn't look at the account of the mutual credit union with respect to what its balances were, its activity, or anything like that?

A No, I didn't.

Q And as a loan clerk or a loan officer, you had never handled any loan with that credit union with which he claimed to have been affiliated?

A No, I didn't.

Q That same afternoon this man, who, other than recognizing his face, was a stranger to you, presented some more of these treasury bills, right?

A It was either that afternoon or the next morning. I don't remember offhand.

Q Well, we won't fight over it but I think your examination indicates the same afternoon.

A Fine.

MR. JULIEN: If I am wrong about that I would be glad to accept any other facts in the case.

MR. HART: It's not clear whether it was all on the same day or whether it was one day and then the next. There are documents bearing different dates.

MR. JULIEN: Well, you have records indicating what the date of the first transaction was, August 5, right?

A That is correct.

Q And the record of the second tran-action, $60,000, was also August 5?

A Then that's the same day. Then he came in the same day.

MR. HART: Your Honor, there are no records in evidence and that's not a completely accurate statement because there is a statement that indicates that Mr. Mazzochi came in the bank on August 4. I don't know what that proves one way or the other but that's what the documents indicate.

THE COURT: I don't know whether you gentlemen are referring to your own pretrial order but that says August 5, '66 and August 5, '66, as the dates.

MR. JULIEN: I will offer in evidence Exhibit 8 for identification which are the dates and the

delivery notices from Royal National Bank to Merrill Lynch for all the transactions. That will clear it up.

MR. HART: May I suggest we offer the originals, your Honor?

MR. JULIEN: I couldn't care less.

MR. HART: I don't know which ones you are including there.

MR. JULIEN: All four of them.

MR. HART: Although the order of evidence doesn't make any difference, there are documents relating to this transaction. This is just one of them. I take it you are going to show these to the witness?

MR. JULIEN: There are four documents which are marked Plaintiff's Exhibit 8 for identification. I respectfully offer them in evidence.

MR. HALPERN: May I see them, please?

THE COURT: May Mr. Halpern see them, please?

MR. JULIEN: Yes, sure.

(Plaintiff's Exhibit 8 was marked for identification)

MR. HALPERN: May I question him for a moment on the voir dire?

THE COURT: Haven't you seen these before?

MR. HALPERN: No. There is certain handwriting

on here that I want to ask him about it.

THE COURT: You will have an opportunity to ask him about it. Why do you want a voir dire for?

MR. JULIEN: They were marked on the depositions. They were attached to the interrogatories. They were taken from his co-defendant.

MR. HALPERN: Now, Mr. Julien --

THE COURT: Now, wait a minute, Mr. Halpern. Ask him one question.

VOIR DIRE EXAMINATION

BY MR. HALPERN:

Q This circle around the name Mazzochi in pencil, was that placed there by you?

A It could have been. I have no way of remembering that.

Q Will you look at the last two exhibits, the last two papers in that exhibit?

A These two?

Q Yes.

A (No response)

Q Do you see any circle there at all?

A No.

Q Can you tell us what that circle is put down in pencil around the name Frank Mazzochi?

MR. JULIEN: That's not voir dire.

A I don't know.

THE COURT: He doesn't know. All right.

MR. HALPERN: I just want to draw that to the Court's attention.

THE COURT: It's been drawn to my attention.

MR. HALPERN: Good.

MR. JULIEN: I offer it in evidence.

THE COURT: Received.

(Plaintiff's Exhibit 8 was received in evidence)

MR. HART: Your Honor, when I stated I had no objection to these documents, that was of course subject to my continuing objection on the basis that there has been no evidence with respect to any treasury notes in the possession or custody of the plaintiff. I assumed that was understood and I meant that I had no objection to the authenticity of the document.

THE COURT: Your continuing objection is on the record as to relevance and materiality.

BY MR. JULIEN:

Q The day you received the note for sale was the day you did it, isn't that so?

A That is correct. The only instance -- I don't

know how late I received it in the day, I think there was a deadline from which we could sell it at Merrill Lynch, you couldn't sell any more bills after --

Q Didn't all this transaction happen on the morning of that day?

A The 10,000, yes. I thought you were talking about the second one.

Q No, I am talking about the first one.

A My apologies.

Q And so the morning of August 5 you received the first $10,000 treasury note, and after receiving the approval of the credit man of your bank, you transferred this by this first document in Exhibit 8, to the Merrill Lynch Company, right?

A Right. We delivered it to Merrilly Lynch against payment.

Q That same day, August 5, this same stranger comes to you.

MR. HART: Objection to the form, your Honor.

THE COURT: Sustained.

Q The same Mazzochi, whom you had only seen as you had seen thousands of other people, comes to you with $60,000 of the same kind of notes, right?

A That is correct.

Q The very same day?

A That is correct.

Q And this is far beyond anything you had handled during that period that you were acting as the man in charge of this department, right?

A That is correct.

Q When he came with this much larger amount, treasury notes, did you see that they were of the same vintage and the same expiring date as that first one that you had handled that same morning?

A I believe I would have noticed that, yes.

Q Did it strike you strange that within a couple of hours he should have presented just one note and then within the same day, within a very short period, then first bring a much larger volume, the same type of note? Did that strike you strange?

A Well, whether it did or not --

Q No, no. Did it is the question. Did it strike you as strange?

A It was a lot of money.

Q Did it strike you as strange that a man who came in --

A Will you define strange? I had no knowledge

of the customer, so whether he had a lot of money or not, I wouldn't know it. If he was a man of substance then it wouldn't be strange. But I had no knowledge of iteither way. That's why I referred it to the officer.

Q You agree that if this was not a man of substance, this would be a strange pattern of behavior, right?

A (No response)

Q Isn't that what you just said?

A Yes, but the thing is, the way I am interpreting, I am looking at my capacity now as to ten years ago when I was a clerk. When I was a clerk I didn't think it was strange at the time.

Q Way back then when you were a clerk that conduct didn't seem strange to you, but now with all your added experience it seems strange, is that it?

A Well, they say experience is a good teacher, yes.

Q But you were in charge at that time, were you not, of this --

A You are interpreting "in charge" the wrong way. In charge is just a clerical function of processing items.

Q Now please.

MR. HART: Let him answer the question.

THE COURT: I am going to let him answer the question.

A When you say in charge, I am in charge of a department. All I am charge of is the processing of documents, the papers, the proofing, the typing of reports. It has nothing to do with any determination or decision making. You are getting that mixed up. It's a completely different area.

Q I will come to that in a moment. When Mr. Landberg was present, he was in charge of that same department?

A Correct.

Q Dealing with the negotiations, dealing with the sale of securities, right?

A Correct.

Q Including these notes, right?

A Correct.

Q And that for the time being was the job you'd assume even though you were just acting in that capacity?

A Correct.

Q And you said yes, I did the same Mr. Landberg would have done, is that what you said?

A Yes. I trained under him for six months.

Q Your whole training to take over this department in Mr. Landberg's absence was six months under Landberg?

A That is correct. I had two years of --

Q And those six months under Mr. Landberg, had you everhandled a transaction where a man, a stranger to you --

MR. HART: Objection, again, to the word "stranger."

Q Isn't it so? You didn't know him socially, did you?

A No.

Q Did you know him from a business standpoint?

A No, I didn't.

Q All right, that's a stranger. When a stranger to you brings in a $10,000 note --

MR. HALPERN: I object to that. The word "stranger." Just because counsel gives an interpretation doesn't mean that is the interpretation. He can use the word description that you never saw him before or anything like that. I object to that connotation.

THE COURT: I will let him use the word "stranger," Mr. Halpern, now, please. Let him use the

word "stranger" if that's the word he wants to use. I will let you use another word when you get to it.

MR. JULIEN: Make it a close friend.

Q During that six-month period of training, had you ever had a transaction where a stranger comes in in the morning of a day and negotiates one bill, and then, within a couple of hours, returns with a sizable amount of bills in the same, of the same vintage, of the same kind, of the same series?

A Not that I can remember.

Q So to that extent it was an unusual transaction, right?

A That is correct.

Q Now, when he came in with these six bills, how much time had gone by from the time Kayner had okayed the first $10,000? How much time had gone by?

A Morning to afternoon, four hours. I don't recall the exact timing on it.

Q Let's see if we can't help a little bit on that.

A Fine, I would appreciate it.

Q You still had time to transact the $60,000 of bills that afternoon, the deadline hadn't yet occurred?

A Then it was probably 3 o'clock or before

that he came in with the second bill.

Q Now here you see the same man again, with this additional bill. Did you ask him any questions at all?

A None whatsoever.

Q Did you ever say to him on either of these two occasions, in words or in substance, "Do these belong to you"?

A No, I didn't.

Q Did you ask him or did he present to you, without your asking, any indicia of a receipt for the purchase of these bills?

A No, I didn't.

Q And now did you send him to the very same credit man again, Mr. Kayner?

A Mr. Kayner, that is correct.

Q Is it Kayner?

A Kayner, right.

Q K-a-y-n-e-r?

A That's correct. Robert Kayner.

Q All right. You held the bills and sent them down to Kayner again, as in the previous transaction?

A I don't remember as in the previous, but if my prior testimony states that, then that is exactly the

way it happened. I don't remember at this time.

Q You would not have changed your practice within just a couple of hours, would you?

A Probably not, unless the credit officer requested it.

Q You have no recollection of having requested the bills from you?

A No.

Q Or coming over and checking the bills in your possession?

A I don't have any recollection of that but he would very well have.

Q Did you ever say so at any time?

A No.

Q According to the best of your recollection, as you sit there, you cannot visualize his having checked these bills at all in your possession?

A That is correct.

Q Now, could you give us -- if it's just guessing I would prefer not to have it -- can you give us some idea of how much time went by while you were holding the bills and while Mazzochi was talking to Mr. Kayner?

A No, I have no idea whatsoever how much time was involved.

Q Well, now, could you give us your best estimate?

A I would just be guessing. It could have been ten minutes, it could have been 20 minutes. I honestly don't remember.

Q If there had been an unusual lapse of time, you would recall that, wouldn't you?

A More than likely, right.

Q And there was no unusual lapse of time that you can recall?

A None that I remember.

Q Then the ordinary lapse of time would be what?

A Ten or fifteen minutes. All right.

Q And in those ten or fifteen minutes you received no inquiry from Mr. Kayner, true?

A None that I remember.

Q Now, perhaps on this occasion, with this much larger sum being presented to you, you went and examined this credit account that Mazzochi had given you as the only connection he had with the bank?

A No, I didn't.

Q Did you have his address?

A Did I have?

Q Mazzochi's address.

A After the first transaction, to the best of my recollection, he gave me his address and phone number because he wanted to find out what the price would be after we made the sale, so I'm sure after the first transaction I had his address and phone number.

Q Well, where would you have put that address and phone number?

A We have a confirmation form that's typed up. It's a regular customer's advice, credit advice and a file copy. It would be on that form.

MR. JULIEN: Would you take our 10 for identification and put it on these originals, please?

(Plaintiff's Exhibit 10 was marked for identification)

Q The first page of 10 for identification, is that the paper that you referred to just a moment ago?

A That's correct.

Q Would that be made up the same day?

A Yes, that would be typed up the same day. As soon as I got the price from Merrilly Lynch, because I needed these figures in order to type up my confirmation.

Q So that we can save time, is that the same with respect to the rest?

A Yes, tha's correct.

MR. JULIEN: We had them marked 10 for identification, your Honor, and 11 for identification, but I will offer them all as 10.

MR. HART: Is there something beyond the document which I don't know about?

MR. JULIEN: No, this was 11. I have had them all marked as 10 now.

MR. HART: May I just take a look at these, your Honor?

THE COURT: Sure.

(Pause)

MR. HART: Your Honor --

MR. JULIEN: I'm not offering 11. I'm just offering 10.

MR. HART: I'm sorry. I thought you said you were offering 11 too.

MR. JULIEN: No. I'm just offering 10.

(Pause)

MR. HALPERN: I have no objection, your Honor.

THE COURT: Mr. Hart?

MR. HART: No objection except my continuing one.

(Plaintiff's Exhibit 10 was received in

evidence)

THE COURT: All right.

Q Now, first, with respect to this address which somehow was secured, did you obtain it or was it obtained by the credit man?

A No, I believe I asked Mr. Mazzochi for his address.

Q When did you ask him for that? Did you ask him on the occasion of his first visit?

A Yes, I would imagine so because the items to type up would have to go out that day so it would have to be on the first transaction.

Q Now, having obtained his address, do you know that 247 South Third Street is in the Williamsburg area in Brooklyn? Do you know that?

A Well, I knew it was in Brooklyn but I didn't know in which area. I have never lived in Brooklyn.

Q Well, your bank was in the Bronx?

A East 149th Street, that is correct.

Q This man was giving you a Brooklyn address?

A That is correct.

Q Did that excite any curiosity on your part as to how this man, who had no personal account with your bank, was transacting this business with your institution?

A The first transaction, no, but then by the second transaction I believe I was aware that he was an officer of a corporation located in the area, but as of the first transaction, no, I didn't.

Q Well, you had told us that you knew he was an officer of the corporation on the very first transaction. That's what you testified to on your examination before trial, is that right?

A I had work in the credit department so I had occasion to see the file of Mutual Credit Union. Now I might have come across his name that way, but I don't remember otherwise.

Q No, but you said, and I read it to you in your examination before trial, you said that when you asked him whether he was a customer of the bank, he said he was an officer of the credit union so you knew that with respect to the first $10,000 transaction, right?

A Right.

Q So nothing new had happened between the first time he came in that day and the second time he came in that day, right?

A Right.

Q But now, you had ascertained his address for the first transaction? You needed it right then and there, is

that right?

A Right.

Q Did it excite any curiosity on your part in this man, who had no personal account with your bank, who lived in Brooklyn, was handling this transaction in a Bronx bank?

MR. HALPERN: Objected to as asked and answered.

THE COURT: Yes.

MR. JULIEN: I have no answer.

THE COURT: Yes you do.

A I said no.

THE COURT: He has answered that.

MR. JULIEN: All right.

Q Well, upon knowing his address, and of course being aware of thelocation of your bank, did you talk to anybody in the bank about the fact that here is a fellow with a Brooklyn address, and now he's back the same day with a lot more of the same securities in your bank?

A No, I didn't.

Q Well, when he came in with the additional $60,000 of bills that very day, did you ask him why he hadn't presented all of them at once?

A Not thatI remember, no.

Q That didn't excite any curiosity on your part?

A At the time, no.

Q By the time he came back the second time, of course, then you recognized him?

A That is correct.

Q And you were well aware, you had the transaction earlier that day?

A That is correct.

Q This unusual transaction?

A That is correct.

THE COURT: The way you are proceeding in this case we are going to take a month to try this case?

MR. JULIEN: Surely not, your Honor.

THE COURT: You assured me of that yesterday.

MR. JULIEN: Oh, my.

Q When Mazzochi presented both the first $10,000 and the 60,000 that same day, did he tell you he wanted to be paid in cash?

A I don't remember if he had mentioned anything to me about that at all. I believe they opened up a checking account.

Q I know what they opened up, but before opening it, didn't he express to you this desire to be paid in cash?

A He could have. I don't remember. But I'm sure at that time then they would have said to him he would have to open an account for the transaction to pass through, but I don't recall whether he specifically said to me "I want the cash for it," and if he did, I would have just said "Well, you will have to speak to the officer out front on it" anyway.

Q I want to show you, as part of Exhibit 8 in evidence, that part of the delivery sheet on which there is pen and ink.

MR. HART: Would you identify which sheet, please?

MR. JULIEN: August 5 pertaining to the $60,000, Mr. Hart.

Q Who was that written by?

A That was written by myself.

Q And would you read those words for us, please? I can make out the first two.

A "Hold check until he comes in."

Q "He" of course referring to Mazzochi?

A That is correct.

Q Now, was this written on this delivery slip to Royal National Bank at the time it was sent to Merrill Lynch?

A No. This would be -- I would have written that after. That wouldn't appear on the original copy that went down to Merrill Lynch for delivery.

Q On the first 10,000 delivery sheet, which is part of Plaintiff's Exhibit 8, no such endorsement appears, is that correct?

A That is correct.

Q Now, I would take it that on this second sheet, the one relating to the $60,000, the typed material was the material that was on the sheet and that part of it which went to Merrilly Lynch.

A Right. This is a duplicate copy.

Q And on your own duplicate copy you wrote this ink endorsement which you have just read to his Honor, correct?

A That is correct.

Q You put it on the same day?

A This would make it a delivery order that goes down the next morning but could have been the same day.

Q But certainly not later than the next day?

A No, definitely not.

Q Did you do this on your own "Hold check until he comes in"?

A The best I can remember on itis that Mazzochi

wanted a bank check payable to himself from the proceeds of his treasury bills, but then I believe, when theofficer was informed of this, he asked him to open a checking account.

I am not familiar exactly with what transpired at that point. But he wanted me to hold the bank check until he came in to pick it up from the proceeds of those treasury bills.

Q We are clear, are we not, that when Mazzochi presented both the first treasury note and the second series that same afternoon, totalling $60,000, by one form or another, he was trying to get you to make payment directly to him, is that correct?

A That is correct.

Q When he was making that request of you, did you inquire as to why he wanted that reather than open an account with the bank?

A No. It's not an unusual request. He might have wanted to utilize the money elsewhere.

Q You gathered from that request that he wanted to get his hands on the funds as quickly as possible, right?

A Well, by that, the next day, after we effected delivery, he could have the money. If he had a checking account it could be credited to his account that day and

he can write a check and draw it out.

Q But at any rate, it at least indicated to you thathe preferred not to have this pass through an account in the bank in his name, isn't that so?

MR. HART: Objection, your Honor. That's not what he said.

THE COURT: I will let him answer the question.

A At that time I didn't even give it a thought, to be perfectly honest with you.

Q As a banking officer --

A Mr. Julien, I was a clerk. Ten years ago I was just learning and starting in banking. I had some experience in the department. I wasn't involved in decision making. I didn't interpret.

Q Sir, I am not asking you about decisions.

A You asked me if I interpreted.

Q I am asking you, as the temporary head of the department dealing with securities, whether it wasn't clear to you, from this request being made by this man Mazzochi, that he was preferring a transaction which would not have the money pass through an accountin his name? Isn't that right?

A That's what it looked like, but at the time I didn't interpret it that way. This is the way he

wanted to proceed. If I was an account officer with experience on the platform, I would have interpreted it that way, but I wasn't.

Q And so your point is to an experienced officer of a bank it should have had that meaning.

MR. HART: Objection, your Honor.

THE COURT: Sustained.

Q Well, now, you have been in banking 18 years?

A Yes.

Q And on the basis of that experience, wouldn't you say that to an experienced bank official or officer, that the conduct of this man on that date would indicate to such an experienced man that this man, who was handling these securities and presenting them to the bank, was trying to effectuate a transaction where his name wouldn't appear in a bank account under his name?

MR. HALPERN: I will object to that.

THE COURT: Sustained.

MR. JULIEN: I think our new rules provide for exactly that kind of thing, your Honor. The ambit of this sort of inquiry has been lodged so much.

THE COURT: I accept no argument after I make my ruling.

Q Well, who was the experienced bank officer who

dealt with this transaction apart from yourself?

A Mr. Kayner was the officer in question handling it.

Q Kayner?

A That's right.

Q And so, where you were concerned, all decision making had to be made by Kayner that day?

A That is correct.

Q Did you convey to Mr. Kayner any surprise on your part about the duplication of this transaction to the extent of a second payment of $60,000 the very same day for the presentation of the first?

A No, I didn't.

Q He asked you no questions about that?

A None that I recall.

Q When you put that first $10,000 note through, you had made no notation with respect to holding the check, correct?

A That is correct. I believe because the transaction went through the same day, I got payment for both transactions at once. I'm not positive.

Q That's just a guess onyour part, is it?

A Yes.

MR. JULIEN: I move to strike that out, if

your Honor please.

THE COURT: It may be struck. I would point out to you,however, that the document speaks for itself. And you have already asked the question once and now you have asked it again. I will tell the witness that you are not to volunteer anything. All you must do is to answer his question.

Q This signature appearing on both these first two documents of Plaintiff's Exhibit 8, both documents dated August 5, is that Kayner's signature?

A No. That's my signature.

Q So that insofar as the delivery and transfer of the treasury notes on August 5 to the bank, to the brokerage firm of Merrilly Lynch, yours was the only signature appended to these documents in behalf of your bank?

A That is correct.

MR. JULIEN: I wonder if I might call upon my friend Mr. Halpern to produce his copies of Plaintiff's Exhibit 8 as they were received from the bank.

MR. HALPERN: Well, there is no testimony that they were received from the bank, to begin with. If you want any copies that we have, I would be very happy to give them to you but I won't agree that they were received.

MR. JULIEN: I don't get that, do you?

MR. HALPERN: There was a telephone order on it, Judge. Now, whether they sent this down or not, that's up to him to tell us.

THE COURT: Ask him the one question. Did you send an advice to Merrill Lynch.

Q Did you send these advices, Plaintiff's Exhibit 8, to Merrill Lynch?

A That's correct. They went down with the actual orders.

THE COURT: The order to sell was telephoned?

THE WITNESS: That was telephoned. And we have received a confirmation from Merrill Lynch the following morning showing the price of the sale.

BY MR. JULIEN:

Q The bills on Plaintiff's Exhibit 8 would be sent down to Merrill Lynch together?

A Yes.

MR. HALPERN: Will your Honor bear with me for a minute. I see my Merrill Lynch man is here.

THE COURT: I'm going to give you a recess at this time.

MR. JULIEN: May we have an instruction to this witness that he is not to discuss this case with

anyone during the recess?

THE COURT: Yes. Talk about the weather.

(Recess)

R U D O L P H S A N T O R O resumed.

DIRECT EXAMINATION CONTINUED

BY MR. JULIEN:

MR. HALPERN: Let the record show I have produced from the files of Merrill Lynch documents they have pertaining to this case and I have just delivered them to Mr. Julien, counsel for the plaintiff.

THE COURT: Yes.

MR. JULIEN: Let the record show that the documents delivered by counsel do not appear to be the records of Merrill Lynch but appear to be the same photostats of documents which were furnished to the plaintiff by the defendant in this case, the defendant Royal, and I am calling for the original documentation from the files of Merrill Lynch, not the same photostats which Mr. Hart has made available to all of us.

MR. HALPERN: This gentleman is here. You can put him on the stand. He will testify that those are the only records.

THE COURT: I am going to take the representation of counsel that those aretheonly records.

MR. JULIEN: Then may we have these marked for identification?

THE COURT: You may.

MR. JULIEN: The records handed to me by Mr. Halpern.

(Plaintiff's Exhibit 40 was marked for identification)

Q Now, Mr. Santoro, you testified during a criminal proceeding brought by the People of the State of New York against Mr. Mazzochi for criminal possession, did you not?

A Yes, sir.

MR. HART: I object to the reference to the criminal proceedings. That objection has been made and objection was overruled. Do I understand that we have the same ruling?

THE COURT: Yes, same ruling.

Q During the course of your testimony at that trial, your attention was drawn, was it not, to this endorsement in your handwriting on the August 5, 1966, $60,000 delivery to Merrill Lynch which is part of Plaintiff's Exhibit 8, and were you asked this question and did you then give this answer respecting that endorsement, page 155:

"Q And what was the purpose of putting that notation on there?

"A Well, as far as I can recollect, Mr. Mazzochi didn't want the funds credited to his account. He wanted a check payable to himself for the treasury bills. So I just marked down that. When I make up the check, when I get the proceeds, hold it till Mr. Mazzochi comes in and then I will give him a check for it."

That was your testimony then, right?

A If it's there, that was my testimony.

Q And that's when your recollection was fresher with respect to the events of this Mazzochi transaction, is that right?

A I would hope so.

MR. HALPERN: Except that he said I would give him the check for it, not a check for it.

MR. JULIEN: The check for it is correct, your Honor.

THE COURT: All right.

Q Well, now, since your recollection now is that originally he was trying to get these monies directly in his hands, and not through --

MR. HART: Objection, your Honor.

MR. JULIEN: I haven't finished, sir.

Q And not through the aegis of an account in his name, did you, after opening the account, ascertain

whether ornot he was withdrawing monies from it?

MR. HART: Objection, your Honor, to the beginning of that question.

THE COURT: I am going to sustain the objection.

Q Did you?

THE COURT: Only to the first part of the question.

MR. JULIEN: I understand. I have it in mind, Judge.

Q His first inclination as to how he wanted the transaction to be handled, you didn't go through with that, did you?

A To the best of my knowledge, no.

Q You know you didn't, don't you? You know he opened an account?

A I didn't open an account for him.

Q You know the bank did?

A The bank did.

Q All right. And after learning that originally he wanted it one way, but the bank opened an account for him in spite of his original intention, did you -- that bank account was available to you for scrutiny, was it not?

A When you say available for scrutiny --

Q You could look at it any time you wanted to, couldn't you?

A What is there to look at? All we have is a trial balance. Everything else is in the bookkeeping department. Any checks that's processed through, I have no --

Q One of the things you can look at constitutes how fast cash is being withdrawn, right?

A That is correct.

Q That's what you could do?

A That's correct.

Q Now, this August 5 -- and take this subject to correction -- August 5 was a Friday. The next time you saw this man, whether he was in or out of the bank, according to what we have in our pretrial order, was August 9?

A I don't remember the date. If that's in the record, tha's the date.

MR. HART: Objection "whether he was in and out of the bank."

Q Did you see himat all excepting for transactions involving this treasury bill, or these bills?

A No.

Q All right. So the next time you see him is

August 9, right?

A Correct.

Q And he is coming in with a handful of bills then, right?

A That is correct.

Q And on this occasion, some $70,000?

A That is correct.

Q Notes of the same series?

A Right.

Q All of the notes throughout all of these transactions were of the same series?

A That is correct.

Q And that was clear to you at the time, was it not?

A That was clear, yes.

Q Now, August 9, that would make it the second working day after this previous transaction, right?

A Right.

Q Now, the bills he is presenting to you would make a total of bills you would handle for him of $140,000, yes?

A That is correct.

Q And between that August 5 day and August 9, had you obtained any additional information with respect

to this man who had been a stranger on August 5?

A No, I had not.

Q Well, in addition to his address, you had his telephone number which was given you, yes?

A That is correct.

Q That telephone number you had put down in one of the bank records, right?

A That is correct.

Q And I show you a paper which is part of Plaintiff's Exhibit 4 for identification, and ask you whether that refreshes your recollection as to the telephone number which you received from him?

A Yes. I believe that is the number I received from him.

Q And what was the number you received from him?

A CY 8-1861.

Q CY 8 -- you have been a Bronx resident?

A Yes.

Q How many years have you been there?

A I lived in the Bronx 27 years.

Q In addition to living there and working there for some period you know that CY 8 is a Cypress exchange, right?

A Right.

Q And Cypress 8 is an exchange in the Bronx, is it not?

A That is correct.

Q You knew that a Cypress 8 number couldn't be a number at this address which you had for Mazzochi at 247 South 3rd Street, you knew that, didn't you?

A That is correct.

Q Did you, between August 5 and August 9, call that Cypress number?

A I called the number on the day of each transaction because after I sold him he wanted to know the price that I had gotten from the treasury bills.

Q Now, that number that you called was for someplace in the Bronx, true?

A I would imagine so, yes.

Q Well, you know that, don't you?

A It was in the Bronx.

Q Did you ascertain any telephone number from him for this Brooklyn address that you got from him?

A No. He gave me a number where I could reach him to give him the price on the bills.

Q Did you ascertain any telephone --

THE COURT: He said no. Let's not go over

it again.

Q Well, when a man opens an account in your bank, does he not give you his telephone number?

MR. HART: Objection, your Honor.

THE COURT: Sustained.

Q Isn't that the practice and the procedure at the bank?

THE COURT: I sustained the objection to that question.

MR. JULIEN: All right, your Honor.

Q Well, now, no August 9, when he presented you with the $70,000 of additional treasury notes, did that cause you any surprise or bewilderment, or wonder when this was going to end?

MR. HART: Objection to the last part of the question, your Honor.

THE COURT: I will sustain the objection to the last part. Did it cause you any surprise or bewilderment.

A To the best of my recollection, it did -- I guess you could say the word amaze -- not amaze. That would be the wrong word to use. Curious, whatever. It was a large amount of money. Then my function was just to process it, and the same thing, refer to the officers and the decision is theirs. My job was not to

make a decision as to whether we should sell it or not.

MR. JULIEN: I didn't ask for any of that.

THE COURT: I will grant that motion in the hope that you will thereby restrain yourself. You ask him the same questions with respect to this transaction as you asked with respect to the other transactions.

MR. JULIEN: But some time has gone by so that it might make a difference.

THE COURT: I don't know about that.

MR. JULIEN: Now it's the 9th, not the 5th.

Q This curiosity that you had, what was the nature of that curiosity? What were you curious about?

A It was a large amount of money.

Q Yes?

A That's the only curiosity I had.

Q You still knew nothing at all about whether this was a man of substance or not?

A No.

MR. HALPERN: Objected to.

THE COURT: Sustained.

Q Well, upon -- by the way, by this time a certain amount of money had been drawn down from his account, had it not?

A It could have all been drawn down, but I was not aware of it.

Q But you could have inquired into that?

A Oh, yes, definitely.

Q And you didn't?

A No, I didn't.

Q And did you, on this occasion, again send them to the officer in charge of credit while you held the bank notes?

THE COURT: It's already been answered. He answered that.

Q And on this occasion, did the officer of the bank in charge of credit ask you to look into what had happened with respect to the account opened by Mazzochi on August 5?

A No, not to my recollection.

Q The question never came up between you and Mr. Kayner?

A I don't believe so. No.

Q Now, if you knew that large sums of money had already been drawn down in cash from that account the day after it was opened, would that have made a fact which you think you should have conveyed to the officers of the bank?

MR. HALPERN: Objection.

THE COURT: Sustained.

MR. JULIEN: As to the form, your Honor?

THE COURT: No. I think you are trying to get out of this witness, in a general way, something that he has no -- this was not his job, to put it colloquially. This was not his job. He has so testified. I think he testified about that on each ofthe occasions. It was not his job to make inquiries. That was the job of the officer on the platform according to his testimony.

MR. JULIEN: On the other hand, we are not required to accept what this witness says is his job when he is substituting for someone else.

THE COURT: He is not substituting --

MR. JULIEN: And there will be testimony as to what is the job of those who are handling this transaction. I am not bound by his testimony.

THE COURT: Through what witness?

MR.JULIEN: Through an expert witness.

THE COURT: Whose expert?

MR. JULIEN: Ours.

THE COURT: You are not going to be permitted to have your expert testify because you have not answered the interrogatories that were served upon the plaintiff.

MR. JULIEN: This is something new, if your Honor please.

THE COURT: You are precluded. You never answered the interrogatories. This is the trial.

MR. JULIEN: I don't know anything about that, Judge, and since this is a matter --

THE COURT: All right, I am going to declare our recess at this time. I think you ought to look into this quite carefully. You haven't given them anything. They can claim surprise.

MR. JULIEN: They haven't. That isn't the basis of any objection which has been raised thus far.

THE COURT: Well, they are not going to raise it until you offer your expert and then they are going to raise it.

We will be in recess until 2 o'clock.

(Recess)

AFTERNOON SESSION
2:00 p.m.

THE COURT: You are still under oath, Mr. Santoro.

R U D O L P H S A N T O R O resumed.

DIRECT EXAMINATION CONTINUED

BY MR. JULIEN:

Q I have been inquiring of you concerning the third group of treasury notes totalling $70,000 presented to you on August 9.

At the time this additional large sum came to you, did you say something to Mazzochi about where he was getting this money from? Did you say jokingly or seriously?

A I do recall bantering with him a little bit, but he just --

Q No.

A He just smiled and didn't say anything to me.

Q But I want you to tell us what you said in bantering or any other way. What did you say to him?

A I said something to the effect "You have more treasury bills? When is it going to stop?" That was it. Just small talk.

Q The Court will judge what kind of talk it was.

A I don't remember what I said.

Q You said "When will it stop?"

A Something to that effect.

Q Did you say "Where is this coming from?"

A No, I didn't.

Q Did you ever say "Where is this coming from?"

A Never asked them that.

Q On one of the transactions down to and including the last one, is that right?

A Down to and including the last one is right.

Q Well, on this date, where you said "When is this going to stop?" what was his reply to you?

A To the best of my knowledge, he just smiled and didn't say a word.

Q Well, then you sent him to which officer on this third occasion?

A It was either Bob Kayner again or Ed McGraw.

Q The documents would help us on that, wouldn't they?

A Yes.

MR. HART: For clarity of the record and myself, are we talking about the transaction on August 9?

THE COURT: The third group, yes.

MR. HART: August 9th?

THE COURT: Yes.

MR. JULIEN: Yes, August 9.

Q That transaction on August 9, could you possibly get some independent recollection of time of day on that? Have you got a note or any records anywhere which would help us?

A No, but if they were transacted that day and sold, it would have to be more likely --

Q On this particular occasion the transaction was concluded on August 10. Does that assist you in ascertaining the time of day when he came in on the 9th?

A Well, in other words, the delivery went down on the 10th, which is also the way it is. The next day is delivery. So it could have been anywhere between 9 and 10 o'clock.

Q I may have confused you. We are talking about the transaction which our pretrial order refers to as August 9. Your delivery slip on that is August 10. Doesn't that convey to you that that was near the end of the day on August 9th and consequently you delivered it down the next day?

A No, because any sale I make is next day

delivery, regardless of the time of day I sell.

Q All right.

Now, when you got this additional -- this is the third series, when you got this additional $70,000 on the 9th, which you transferred down on the 10th, did you pass on to your credit officer on that day the conversation that you had had with Mr. Mazzochi concerning when is this going to end and your failure to receive a response?

A No, I didn't.

Q Did you make some note in the bank records?

A None whatsoever.

Q Concerning that.

A None whatsoever.

Q And I asked you before but I want the judge to know the name of the officer on this third occasion.

A Which date was that?

Q The transaction of August 9th transmitted by you to the officer.

A Kayner. It's not legible but you can see the R through the carbon. It didn't come through that well.

MR. JULIEN: Your Honor, for the record, Exhibit 10, that page which is dated August 9, '66, was $70,000.

The illegible signature on "approved by" is that of Mr. Kayner.

THE COURT: All right.

Q Did you, upon receiving no answer to your inquiry as to when this is going to stop, at that time look at theaccount which the bank had opened for this man on August 5 to ascertain whether he left the money there or had speedily drawn it out?

MR. HART: Objection, your Honor.

THE COURT: I will let him answer it.

MR. HART: I believe there is no evidence about a date.

THE COURT: Well, let's see. Whatever date it was opened. August 9. Counsel is quite right. It was opened on August 9.

Q Did you, on the occasion of August 10, when this third batch was being offered to you, inquire as to --

MR. HART: Objection, your Honor. The witness established that it was the 9th, they were offered the 10th and he sent them on to Merrill Lynch.

THE COURT: Yes. That is correct.

MR. JULIEN: All right, I will withdraw that.

Q On August 10, when you sent these bonds down to Merrill Lynch, did you inquire as to whether or not monies had been withdrawn from this account on the very day that it was opened, August 9, 1966?

MR. HALPERN: Objection. There is no testimony that the bonds went to Merrill Lynch. As a matter of fact, they didn't go Merrill Lynch. That's what I am objecting to.

MR. HART: And I further object on the ground that the witness testified time and again that that was not his function.

MR. JULIEN: That is no objection. I don't understand this one.

MR. HALPERN: For the record, the bonds were delivered to the Manufacturers Trust Company, they had physical possession, they held on to them until they were transferred to a new owner. They never were in the possession of Merrill Lynch.

I draw your attention to --

MR. JULIEN: Your Honor, the fact that he may have some other testimony on this subject is not an objection to what I am asking this witness.

MR. HALPERN: I am objecting to the form of the question. It presupposes a state of facts.

MR. JULIEN: It presupposes what he said. He said he sent them to Merrill Lynch. He said the certificate of delivery accompanies it. The address of Merrill Lynch is on the certificate of delivery. On that basis I am entitled to answer this question.

MR. HALPERN: If your Honor please, with the consent of Mr. Julien, I would like you to see this, and you could see it too, where these bonds went.

MR. JULIEN: It doesn't make any difference. I have the testimony of this witness who handled the transaction.

THE COURT: I will let him ask the question of this witness.

MR. HART: Your Honor, if I may request if counsel could move back I could sit at my tale and hear him. I have a lot of papers on the table that I would like to be able to make reference to.

MR. JULIEN: Well, please, allow me my freedom of action. You can have yours.

Just keep your voice up.

MR. HART: It's thewitness also who has a tendency to lower his voice when he is in close proximity to him.

THE COURT: Yes, loud and clera.

Q By the time you sent these down pursuant to this delivery certificate in evidence as Plaintiff's Exhibit 8, accompanying the treasury notes to Merrill Lynch, Pierce, Fenner & Smith, 70 Pine Street, had you looked into that account which had been opened on the 9th to find out whether monies had been withdrawn from that account on the day it eas opened?

MR. HALPERN: Objection, for the record.

THE COURT: All right, overruled.

MR. HALPERN: Presupposes a state of facts that are not so.

Q Your answer, please?

A No, I didn't.

Q Now, we know now that this account was opened on August 9, and the signature card -- this is the signature card, is it not, accompanying the opening of Mr. Mazzochi's account?

A That would be the signature card that we advised the --

THE COURT: We can't hear you.

MR. JULIEN: He said that would be the signature card utilized by the bank.

Q And since we aredealing with a photostat

rather than an original so that his Honor will know when he looks at these exhibits, I take it that these two pages are actually the two opposite sides of --

THE COURT: That is correct.

MR. HART: Your Honor, I have the original.

MR. JULIEN: Oh, fine.

Transfer our 36 to his original which he will give us in a minute.

(Plaintiff's Exhibit 36 was marked for identification)

MR. JULIEN: I will now offer that in evidence.

THE COURT: Is there any objection to that signature card?

MR. HART: No objection.

MR. HALPERN: No objection.

THE COURT: All right, received.

(Plaintiff's Exhibit 36 was received in evidence)

Q Now, was Mr. McGraw one of the parties on duty in the credit department of the bank on either the 5th or the 9th when these transactions took place?

A I believe Mr. McGraw was there on all occasions.

Q And Mr. Salkind, who was he?

A He was a junior credit officer also located on the platform at the 149th Street office.

Q Now, I notice on the signature card, Plaintiff's Exhibit 36, there is a telephone number for Mazzochi at ST 2-3835. Did you get that number?

A No.

MR. HART: I didn't hear the word.

THE COURT: Did you get that number? And he said no.

Q Apart from that Bronx number, Cypress 8 and so forth, did you ever telephone this depositor at a number in Brooklyn, the one on the signature card or any other?

A To the best of my knowledge, I believe I just telephoned him at the number he gave me that I had listed on the card.

Q Then the answer is no?

A No.

Q And did you, or anyone else to your knowledge in the bank, make any verification of the address given by Mr. Mazzochi at 247 South 3rd Street, Brooklyn, as to whether it was indeed his address or not?

MR. HART: Objection with respect to anyone else in the bank.

MR. JULIEN: Anyone else to his knowledge.

THE COURT: To his knowledge. Loud.

A To my knowledge, no, but it's a procedure when you open a checking account to verify the address of the individual.

Q I see. And that was the procedure at the bank at that time?

A That's correct.

Q And this was part of your training and learning while you were under the instruction of this gentleman who was in charge of the securities and loan office during that six-month period, right?

A No, I had nothing to do with opening checking accounts.

Q But you knew this to be the practice for those who do open?

A That is correct.

Q And they verify the address in what way?

A I honestly don't know how they verified the address.

Q At sometime for verification though?

A Yes.

Q That banking practice that you told us about, was the verification of the telephone number given too?

A I don't know.

Q There is a purpose in taking a telephone number,right?

A The purpose is to reach the customer.

Q Yes.

A So I would assume it's a correct telephone number. But whether they make any independent verification of it, or did at that time, I don't know.

Q During all the time that you were handling the transactions which we know now totalled $212,000 ultimately, during all of that time, running into September when the last one took place, did you ever make a telephone call to this man at any telephone or on the Bronx phone?

A To the best of my knowledge, no.

Q And now I am restricting it only to your conduct, and so that I have the entire subject covered, up to and including the last transaction you handled for Mazzochi, did you personally ever verify his address?

A No, I didn't.

Q Or the extent of his substantiality if any, financially?

A No, I didn't.

Q On September 12, 1966 Mazzochi came to you again?

A That is correct.

Q Every transaction involving these Treasury Notes to the total sum of $212,000 always originated between Mazzochi and you?

A That is correct.

Q And now you told us that you considered $140,000 a substantial amount and now he is bringing in an additional $72,000?

A That is correct.

Q Even more substantial?

A That is correct.

Q And you entertained some misgivings, didn't you?

A Yes, I did.

MR. HART: Objection to the word misgivings, your Honor. It is a word hard to define.

THE COURT: I will let it stand.

Q What were the misgivings you were entertaining?

A Well, the sum had reached over $200,000 and I believe in this last transaction Mr. Kayner was not either out of the office or not there. So I believe to the best of my knowledge I brought the transaction out to Mr. McGraw, and I informed him, because I don't believe he was aware at the time of the transactions, that we had prior sold $140,000 worth of Treasury Bonds for Mr. Mazzochi and now he was coming in with another $72,000.

Q And what were your misgivings?

A Well, the sum was getting larger and larger.

Q Well, you told us that on August 9th you considered this to be a large sum, right?

A Right.

Q And you told us that McGraw had been available on all previous occasions when this gentleman was in, yes?

A That is correct.

Q As a matter of fact, it was McGraw who introduced this man to be a depositor on August 9th, isn't that right?

A If you say so, yes. I don't know that for a fact.

Q Well, do you know, apart from whatever documents we have here, do you know who introduced him to this bank to be a depositor personally on August 9th, 1966?

A No.

Q And now looking at the card doesn't that refresh you that the man who you say you were approaching for the first time was actually the man who introduced him to open the account through which the monies from these notes would be paid? Right?

A The way the card reads, that is what it says.

Q You don't dispute it, do you?

A No.

Q Of course not.

So the only thing which you changed was that the substantial amount of 140 was now 212, right?

A That is correct.

Q But the situation otherwise was precisely the same as it had been on August 9th, true?

A That is correct.

Q Now, when you conveyed your misgivings to this same gentleman, McGraw, who was the introducer, according

to Exhibit 36, did he ask you whether you had verified anything with respect to this man, his address, his telephone number, or the ownership of these Treasury Notes?

A No.

Q Never asked you that?

A I left it in his hand at that time and later he came back to me and authorized the sale.

Q Listen to me. I simply want to know whether in your conversation between you two bank officers or one an officer, he wasn an officer, wasn't he?

A Yes, I believe he was assistant vice-president.

Q -- whether this subject was ever discussed between you two people? Have you verified this fellow? Has anybody verified him? Did it come up?

A No.

Q And now you knew, did you not, that this man had been withdrawing substantial amounts from his account by that time starting with August 9th, and continuing sometimes on a daily basis down to the time he was presenting this additional $72,000 of notes on September 12th? You knew it.

A I was not aware of it.

Q You never even checked that?

A I never checked.

Q When you began to have these -- when you began

to ask the question on August 9th, "When is this going to stop?" And on September 12th when you saw such an additional substantial sum, didn't you check to see what was happening? If the money was in the bank you were in a relatively safer position, were you not?

A I brought it to the officer's attention. The rest was up to him.

Q I am going to ask the officer himself. I mean to find out what each of you did. I want you to tell me what you did.

A I didn't do anything.

Q And again, this would be just a minute's inspection of records of the bank, is that true?

A That is correct.

Q Now, again, in the conversation you had with Mr. McGraw on September 12th, apart from the checking I questioned you about before, did either of you say to the other anything about what is the status of Mr. Mazzochi's account?

A I didn't say that to Mr. McGraw. He didn't mention it to me.

Q Well, even up to that time of your experience in the field as it then was, you didn't treat Treasury Notes like cash dollar bills, did you?

A No.

Q Not only were you aware of the difference with respect to them, but to some extent you did make some kind of check that we have not talked about, isn't that right?

A A check in regard to what?

Q In regard to the certificates which on each occasion you held?

A The bearer Treasury Bonds?

Q Right.

A That is correct.

Q Now, you don't ordinarily make such a check with respect to currency, do you?

A Dollar bills?

Q Yes.

A No.

Q When you say dollar bills, you are not conveying single dollar bills?

A Any denomination.

Q Thank you.

But here, so that we have the whole picture, you did, on one or perhaps more occasions, check the serial number of each of these Treasury bills with some government office, true?

A The Federal Reserve Bank of New York.

Q The Federal Reserve Bank of New York?

A Yes.

Q You say you did that?

A I did that, yes.

Q And you spoke to the branch in New York?

A The Federal Bank, 33 Liberty Street.

Q In New York?

A 33 Liberty Street in New York.

Q That is the only government agency that you say you checked with, true?

A The only one I checked with.

Q I'm only talking about you at the moment, is that true?

A That is correct.

Q They never said to you, for example, with respect to any one of your inquiries, "That type of inquiry has to be made in Washington"? That was not said to you?

A That was not said to me.

Q Now, when you made that check, whenever you made that check, you were aware, were you not, that the agency that you were calling would only have such information as to cases of thievery discovered and reported, right?

A To the best of my knowledge, they would have a list of any stolen or reported missing Treasury Bills.

Q And that of course conveyed to you, did it not, that this would only mean things which had been stolen and discovered to have been stolen and reported, right?

A That is correct.

Q So that you were aware, under those circumstances, that there could be an area of Treasury Bills perhaps stolen, not ascertained, and not yet reported?

MR. HALPERN: Objected to.

THE COURT: I will sustain the objection. What you are asking for is speculative.

Q Well, in the position which you then enjoyed, your experience already had been sufficient for you to know that there could be some Treasury Notes not yet listed even though stolen?

A That is correct, because I don't know how quickly they marked them up or listed them.

Q All right.

Now, did you, on any of the four occasions that you dealt with this gentleman, with this man Mazzochi, did you ever ask how long these bills had been in his possession?

A No, I didn't.

Q Even with the experience you then enjoyed, if the bills were in his possession, a short period of time, there would be a possibility that they could be missing

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and lost and not yet reported, true?

A True.

MR. HART: Objection.

THE COURT: Sustained.

Q Didn't you, on this last occasion when the $72,000 came in on either, on September 12th, didn't you say to him then, "Where are you getting this money from?"

A No, I didn't.

Q That would have been an unlikely question for you to ask.

MR. HART: Objection, your Honor.

THE COURT: Sustained.

Q In the examination before trial, page 46, line 24 :

"Q Did you have any conversation at all with Mr. Mazzochi about ownership of these Treasury Bills, any talk at all?

"A None whatsoever. The last transaction I remember asking Mr. Mazzochi vaguely where he was getting this money from. Just in a joking manner. And he smiled at me, and that was the extent of it."

Were you on a first name basis with this fellow Mazzochi?

A By the last transaction, yes.

Q You were calling him Frank?

A That is correct.

Q And he was calling you --

A Rudy.

Q -- Rudy?

A Yes.

Q Well, now, in spite of what you conveyed on this fourth occasion, September 12th, to Mr. McGraw, McGraw authorized you to put this sale through too, didn't he?

A That is correct.

Q And to be sure I have covered all possibilities, before telling you to put it through, was there anything McGraw told you to do?

A Nothing at all.

Q Now, when you put this deal through, referring to the $72,000 on September 12th, the monies came into Mazzochi's personal account as the same was done with the other three transactions?

A There was a problem with the last transaction. I don't know whether the money wasn't directly put into his account or they held up putting it in his account. I don't recall exactly what took place on that last transaction as to the proceeds when they came in.

Q Let's pursue that for a moment. What was the

nature of the problem which arose with respect to $72,000 which you were told to accept?

A I don't remember exactly. I think some prior testimony would probably state what the problem was.

Q Prior testimony of yours?

A No, I don't believe so, because I was not involved in the initial stopping of the funds or --

Q Now, up to this time, up to the time you accepted the $72,000 and sent it down to Merrill Lynch in accordance with Exhibit B, up to that moment -- before he gets up, you sent it down to Merrill Lynch, did you not?

A On this last one here, it was Merrill Lynch care of Manufacturers Hanover. Maybe they started handling their deliveries for the last one but prior to that they all went down to Merrill Lynch at Pine Street. They were acting as agents.

Q By the way, even on the last transaction --

MR. HALPERN: I ask that "They were acting as agents," be stricken. You can't prove agency through his mouth.

THE COURT: I don't think it is going to be that important.

MR. HALPERN: All right, there is no injury.

Q By the way, before you would send it on this fourth

occasion, to some depository, you would require from schmucks to do that, wouldn't you?

A Yes, we would have been informed by Merrill Lynch that delivery should go to another area instead of directly down to them.

Q That was common and accepted practice?

A Yes.

THE COURT: I think you better get back there. Otherwise you won't have it on the record.

Q That was common and accepted practice?

A Yes, it was.

Q Up to the time you sent it down to Merrill Lynch care of Manufacturers Hanover on September 12, 1964, the $72,000 of Treasury Notes, up to that point each of the four transactions insofar as your credit officer and you were concerned, had gone precisely the same way, yes?

A That is correct.

Q Now, on this last onccasion, however, there were some earmarkings of these funds by the bank so that Mazzochi couldn't get them, right?

A That is correct.

Q But nothing knew that you knew about had been happening, right?

A No, I was not awar eof what was taking place.

I was just informed that the funds would be place in suspense when he received the check.

Q Now, even from your experience at that time, when you handled these notes, you were handling them as agent of Mazzochi, were you not?

A Right. The bank was acting on the customer's behalf.

Q And when the monies are received and deposited in his account, then the relationship of bank and depositor was then created, right?

A That is correct.

Q At that time it was no longer a matter of whether or not a Treasury Bill or Treasury Note shall be sold in and for a principal; now it was a matter that you have monies on deposit to the order of a depositor, right?

A That is correct.

MR. HALPERN: At this point I would like to state for the record and ask that that answer be stricken because the money that was sent, whether by the Manufacturers, which I believe sent it, sent it to the Royal National Bank of New York and not to Mazzochi. What they wanted to do with it is their fault. That is why I object to the form of the question.

MR. JULIEN: I never heard of this kind of trial

practice in my life where by using the medium of an objection he is telling what he intends to prove in his case. You can't do that. I am progressing on the basis of step by step of what this man is telling me. If you have got some other answer wait until your turn. Isn't that right, Judge?

THE COURT: I will let the answer stand.

MR. HALPERN: Subject to be stricken if I may.

THE COURT: Subject to be stricken if the evidence is otherwise.

MR. JULIEN: This bores me, too. I'm sorry, your Honor. I don't mean to be captious, believe me, but I don't understand that either. Supposing he prevails on an issue, does that mean you strike out the answers?

THE COURT: Ask the questions. Just ask questions.

MR. JULIEN: Okay. I'm sorry.

THE COURT: I think what we ought to do is declare a recess and have a drink of water.

(Recess.)

BY MR. JULIEN:

Q Aren't the depositions which you were given to read apart from your own, was there included the deposition of Steven Weiss of the Federal Reserve Bank of New York?

A No. They were just the officers from the Royal National Bank.

Q Were you told that in a deposition taken here of an employee of the Federal Reserve Bank at Liberty Street, New York City, were you told that this gentleman says that they don't maintain any lists of lost or stolen securities?

MR. HALPERN: Just a moment. I object to that.

THE COURT: I will let him answer it.

Q Sir?

A Yes, I was informed of that.

Q And I am going to show you a question and answer from the deposition of Mr. Weiss, referring to page 6 --

MR. JULIEN: Do you have a copy of this, your Honor?

THE COURT: Let me see.

No, I don't have it. I'm sure I don't have it.

MR. JULIEN: Perhaps by the end of the day, your Honor will make it known to us what you don't have and we will furnish it to you.

THE COURT: All I know is what I do have. I don't know what I don't have.

Q I show you a question and answer, and I am not going to read it out loud.

MR. HART: Will you identify the lines?

MR. JULIEN: Line 3, up to and including

line 7.

Q Does this refresh your recollection? You can read up to line 12 on that same page.

(Pause.)

Does this refresh your recollection that with respect to these notes you didn't call any New York office of the Federal Reserve Bank?

MR. HALPERN: Objected to. He said he called him at Liberty Street. He didn't call him in Washington and I object to this.

MR. JULIEN: That is just the point. That is the only place you can call, is Washington.

THE COURT: Just a moment. There is an objection. I am going to sustain the objection. He never said that he called Washington.

MR. JULIEN: That is my point entirely.

THE COURT: Ask him if he called Washington.

MR. JULIEN: He said he didn't.

THE COURT: Then you have had an answer.

MR. HART: Your Honor, I don't believe the record is very clear on just what happened.

MR. JULIEN: I am going to make it clearer for everybody right now so that you will have this in juxtaposition, your Honor, when you get to read the

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minutes, which we have ordered, by the way.

THE COURT: Yes.

MR. JULIEN: I would like to have it appear in the record, and I offer in evidence the deposition taken of Steven Weiss who is now in Washington D.C. and therefore can't be brought here under subpoena. His testimony, starting at page -- I will just briefly allude to page 3 -- I don't want to make that representation yet.

THE COURT: You withdraw that representation for the time being.

MR. JULIEN: Yes, sir, but, at any rate, perhaps there will be no objection, in the interest of saving time, if I read from the testimony of Steven Weiss who was produced here from the Federal Reserve Bank of New York and deposed with all parties present.

MR. HALPERN: I don't think I was a party to that deposition.

MR. JULIEN: Messrs. Hume & Hart by Ted Bajo.

MR. HART: He was with our office at that time.

MR. JULIEN: Weren't you in the case at that time?

MR. SCHLESINGER: They had notice. They just didn't attend.

MR. JULIEN: Counsel is stelling me that the notice on file alludes to service upon you. Do you want

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to check?

MR. HALPERN: I would like to see the notice on file.

MR. HART: And while he is checking, I have another objection depending upon the availability of the witness pursuant to subpoena. Is your office in the process of checking to see if he is available? I would like to have him called and testify alive.

MR. JULIEN: I let the chief officer of the bank go away because of a vacation. I cooperated to that extent and here an independent witness is examined under oath and they won't allow us to save time.

MR. HALPERN: All objections except as to the form are reserved for the Court. There may be a lot of objectionable questions there reserved for the Court. You just can't offer the entire thing.

MR. JULIEN: If that is the game, then really, Judge --

MR. HALPERN: I object to the classification, if that is the game.

MR. JULIEN: I was really lulled by counsel with respect to a man whose live testimony was vital. I accepted the transcript in his place and let him go on vacation and now, with respect to a man who has no interest in our

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case at all, we can't save time by reading his deposition.

MR. HART: May I state the basis for the objection, your Honor?

THE COURT: Yes.

MR. HART: On the record.

THE COURT: On the record.

MR. HART: I believe it was following the deposition of Mr. Weiss, although I am not sure, but I believe it was, that we took the deposition of the Bureau of Public Debt, the chief of the Bureau of Public Debt in Washington, D.C.

Now, Mr. Santoro, who has testified, he called the Federal Reserve Bank and they told him that they didn't have a listing of these securities and he testified that they didn't tell him don't call us because we don't do that. Mr. Weiss has testified to the contrary.

Now, it became apparent to me during the examination of the chief of the Bureau of the Public Debt that the Federal Reserve Bank in New York at least serves I believe more than one function. It acts as the fiscal agent of the Bureau of the Public Debt and in that capacity in accordance with directive of the Bureau of Public Debt, and we will be putting evidence in on that shortly, they don't keep any official listings of missing

certificates on behalf of the Bureau of the Public Debt, and as I look at Mr. Weiss' testimony, he was testifying in that regard. That doesn't necessarily mean that they didn't keep records in some other department as I understand they now do, not on behalf of the Bureau of the Public Debt but as a convenience for the banks whom they service as part of the Federal Reserve system.

MR. JULIEN: Once again, if he has some rebuttal testimony to something that has been offered, this is no reason to prolong or to keep out testimony which was taken in this deposition. If he has something else to offer, your Honor will be considering it.

THE COURT: True.

MR. JULIEN: That doesn't mean we have to go through the trouble of trying to get somebody from Washington.

THE COURT: I think it is a valid objection basically.

MR. HART: The basis for the objection is that if the witness is available, he should be called, and I was explaining that the basis for my objection is not frivolous. It is because I believe thathis testimony might be misunderstood.

THE COURT: His testimony in his deposition may

be incomplete is what you are talking about now.

MR. HART: Yes, sir.

MR. JULIEN: And you can supplement it by some other testimony.

THE COURT: No. He can probably supplment it through cross examination of Mr. Weiss.

MR. JULIEN: You prevailed upon me to excuse somebody who is very important, and I let him go because of a vacation.

MR. HART: I didn't prevail upon you.

THE COURT: I don't want to have this argued in court, please.

MR. HART: I apologize, your Honor.

THE COURT: Let's ascertain whether Mr. Weiss is available or is not available. And we will go from there.

BY MR. JULIEN:

Q Now having read the passage which I pointed out to you from page 6 of Mr. Weiss' deposition, is your memory refreshed as to whether or not you did in fact call the Federal Reserve Bank of New York?

A To the best of my recollection, I placed the call to the Federal Reserve at 33 Liberty Street. I asked for their Treasury Bill Division and I asked them if they had any listing or flyer of the following numbers of

Treasury Bills.

Q Did you make the call in person?

A I made the call myself.

Q And I would assume that you kept some record of that telephone call, some notation to that effect.

A No. I have got a number in my office now where I can call --

Q I am not asking you about now.

A When you say why would I keep a notation of a call I made --

Q I didn't ask you why. I asked you did you.

A No, I didn't.

Q Weren't you told, when you made that telephone call -- was it one call you made?

A No.

Q How many calls did you make?

A I called on each occasion.

Wait a minute, On each occasion, to the best of my knowledge.

Q What did you mean by "to the best of my knowledge"? Did you or did you not on each occasion make such a call?

A I did make a call.

Q Now it is you did make it?

A Well, I mean, what am I going to say? Otherwise I say no. To the best of my recollection, nine years ago, I made the phone call.

Q Is there anything you can consult to refresh your recollection whether you called this bureau here at Liberty Street about whether or not they had listings?

A I have no documentation on that.

Q What is the name of the agency that you called?

A The Treasury Bill Division.

Q Of what?

A The Federal Reserve Bank of New York.

Q And do you perhaps ahve the name of the person you spoke to?

A No, I don't.

Q Did any of these credit officers, either the first one, Carney, or the second one, McGraw, ask you to make any such calls?

A Not to my knowledge. Mr. McGraw, I believe, on the last transaction, he might have asked me if I had made any checkings on them. I don't recall exactly, though.

Q Well --

A But it is a procedure that was established within the department --

Q Excuse me.

When you say "may" you are saying you don't know whether he did or you didn't.

A You are right. I don't remember exactly.

MR. JULIEN: All right. I move that that be stricken.

THE COURT: I am going to leave the answer in because he doesn't know.

MR. JULIEN: He just doesn't know.

THE COURT: No, he doesn't.

Q Did you ever call the Bureau of Public Debt?

A No.

MR. JULIEN: All right, you may inquire.

MR. HART: Your Honor, may I take a moment to put some exhibit numbers on each of these documents.

THE COURT: All right.

(Pause.)

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CROSS-EXAMINATION

BY MR. HART:

Q Mr. Santoro, can you identify the documents which have been marked Defendant's Exhibit A for identification?

A This is the bank signature card on the Mutual Credit Union and the corporate banking resolutions on the Mutual Credit Union.

MR. HART: I offer them in evidence.

MR. HALPERN: No objection.

THE COURT: All right. They will be received in evidence.

MR. HALPERN: We are just comparing them with our photostatic copy.

(Defendant Royal National Bank Exhibit A for identification received in evidence.)

Q Can you identify the documents which have been marked Defendant Royal National Bank Exhibit B for identification?

A They are authorization letters signed by Frank Mazzochi authorizing the Royal National Bank to sell the various treasury bills.

MR. HART: All right. I offer them in evidence.

MR. JULIEN: No objection, Judge.

MR. HALPERN: No objection.

(Defendant Royal National Bank Exhibit B for identification received in evidence.)

Q Mr. Santoro, can you identify the documents marked Defendant Royal National Bank Exhibit C for identification?

A Confirmation orders from Merrill Lynch, Pierce, Fenner and Smith, Incorporated regarding the sale of all Treasury bills involved.

MR. HART: I offer them in evidence.

MR. JULIEN: No objection.

MR. HALPERN: No objection.

THE COURT: Received.

(Defendant Royal National Bank Exhibit C for identification received in evidence.)

Q Can you identify the documents marked Defendant Royal National Bank Exhibit D for identification?

A These are the bank statements on the account of Frank Mazzochi, Jr., covering the months of August, September and October.

MR. HART: I offer them in evidence.

MR. JULIEN: No objection, your Honor.

MR. HALPERN: No objection.

THE COURT: Received in evidence.

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(Defendant Royal National Bank Exhibit D for identification received in evidence.)

MR. HART: Your Honor, with respect to Exhibit A, I intended to introduce two cards and to introduce a third which was dated after these transactions took place. The third card was inadvertently attached and I request permission to remove it. The two signature cards are prior to the date of these transactions.

I have no objection to leaving it in if counsel would prefer. In fact, we will leave it in.

I withdraw my application, your Honor.

THE COURT: All right.

MR. JULIEN: Will you give me a copy?

MR. HART: Yes.

MR. JULIEN: That is one we didn't have a copy of. That's why I spent a little time looking for it.

Q One item first, Mr. Santoro. When you testified that you were given copies of the transcript of the depositions of all of the banks' witnesses, were you referring to transcripts of their testimony such as was taken of you where questions were asked of you and answers were given and a stenographer took it down? Is that what you were referring to?

A No. They looked like they were just statements

drawn up explaining the situation which each officer of Royal National--that was involved in the transaction--

Q They weren't transcripts of questions and answers?

A No.

Q So that when you said before that you had those transcripts, you did not understand the question, is that correct?

A What I have is a transcript of the criminal trial, my testimony, and of the depositions, whatever you call them, just where there is the title of each officer, and then his involvement in the case, as to whether he had opened the checking account, or what part of it he had participated in. It is not a question and answer thing.

MR. HART: I know the document that he is referring to. I don't want to bring it into the case. I just wanted to remove the idea.

MR. JULIEN: Why these gratuitous statements? I am entitled to look at what he looked at. You prepare a witness and show him some documents other than what he told us about, and he saw them to refresh himself. We are entitled to see them.

Q When did you receive those documents?

A In 1969.

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MR. JULIEN: Iam entitled to look at them. I call upon counsel for their production.

MR. HART: I don't have them. Get them from the witness.

MR. JULIEN: You have the original of the copies of which you gave him. I will take those.

MR. HART: I have the document I delivered to the bank.

MR. JULIEN: Let's get this straight.

MR. HART: I believe I know what it is but it wasn't transcripts--

MR. JULIEN: You showed him statements,he says, drawn up for each of these people from the bank which you allowed him to look at. I am entitled to see what he looked at.

Now, where are they?

MR. HART: Is your Honor ruling that he is entitled to look at them?

THE COURT: Certainly.

MR. HART: May we ask the witness, then, since I am only guessing as to what it was, but I gather it was not--

THE COURT: Let's settle this out of court by your talking with the witness after we are finished with

our day's work. I am going to direct that they be produced.

MR. HART: I will show him what it is and I will ask him if that is what he has.

THE COURT: All right. Do it that way.

BY MR. HART:

Q Is this the document that you were referring to?

A This is it.

MR. HART: Should I put it in evidence?

THE COURT: Show it to Mr. Julien.

Wait a minute. I am not going to have you read that now.

MR. JULIEN: I am not going to hold up the proceeding. You don't mind if I read it while he examines the witness, do you?

THE COURT: No.

MR. JULIEN: That is what I will do.

THE COURT: All right.

MR. JULIEN: First, may this be marked for identification so that we will know what we are referring to?

THE COURT: Yes.

(Defendant Royal National Bank Exhibit E marked for identification.)

Q Mr. Santoro, would you please look at Defendant's Exhibit A and tell us what those documents reflect with respect to Mr. Mazzochi? Please make reference to dates as you do so.

A Well, the Mutual Credit Union, on February 10, 1965--on April 27, 1965, the corporate resolution of the Mutual Credit Union shows Frank Mazzochi, Jr., President; Jacob Haimowitz, Vice President; Sol Levine, Secretary; Lawrence Rothberg, Treasurer; and David Fassberg, an authorized signature.

At this time Mr. Mazzochi was President of the Mutual Credit Union.

Q Did you cover both of them?

A On January 19, 1966, the corporate resolution of the Mutual Credit Union also lists Frank Mazzochi, Jr., as President; Arnold Duchin, Vice President; Solomon Levine, Secretary; Lawrence Rothberg, Treasurer; and David Fassberg, authorized signature.

The signing arrangements on the account at both periods were any two officers.

A Now, are you familiar with the account of the Mutual Credit Union?

A Well, I am not totally familiar with it but I have knowledge of it from when I worked in the Credit

Department of the Royal National Bank.

Q What type of an account was it?

MR. JULIEN: First may we inquire in point of time, if your Honor pleases, whether this was knowledge he had in '66 or subsequently acquired? I think that might be important.

Q Would you state the time of the knowledge that you are about to give us?

A (No response.)

Q In other words, did you know about the Mutual Credit Union?

A I knew of the account of the Mutual Credit Union. At the time when Mr. Mazzochi came into the bank, I did not know that he was the President of the Mutual Credit Union. The Mutual Credit Union was a make-up, I believe, of real estate individuals in the area as well as other established gentlemen that formed this union for whatever purpose. I really don't know. They were some of our more well-regarded customers.

MR. JULIEN: I object to "well-regarded."

THE COURT: I think he can say that. Overruled.

A I believe it was just a routine non-borrowing checking account.

Q Do you know how long the account had been with

the bank?

A I believe it went back to the 1950s. I don't know the original opening date of the Mutual Credit Union itself.

Q How long had the branch been at 149th Street?

MR. JULIEN: The Royal branch?

MR. HART: The Royal branch.

A I believe it had been there at least 20 years or more.

Q Well, you will have to say from when.

A 1945. I'm not positive about this. I'm just taking an educated guess.

Q But the Mutual Credit Union did go back--

A To the early 1950s.

Q And then a year-and-a-half or so prior to the transactions with Mr. Mazzochi he was an officer of the Credit Union?

A He was an officer of the Mutual Credit Union at that time.

Q Mr. Santoro, I ask you to look at Exhibits B, 10, 8, and C and tell us if they refresh your recollection as to the dates and chronology of the first transaction involving a Treasury note with Mr. Santoro--I'm sorry--with Mr. Mazzochi?

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A On August 4th he signed the authorization letter for us to sell one $10,000 U.S. Treasury note.

Q Does that refresh your recollection as to when was the first time he came in with a Treasury note?

A It would be August 4th. August 4th was the first time he came in. August 4th, 1966.

Q When did the sale of that Treasury note take place?

A It was sold through Merrill Lynch, Pierce, Fenner & Smith on August 4th--

Q On which date? When was it sold?

A It was sold on August 4th.

Well, from the records we have here, Merrill Lynch, Pierce, Fenner & Smith show a trade date of August 5th, but I believe the bill was sold August 4th and delivered down there on August 5th as per the documentation here, along with the $60,000 which would have made a delivery on August 5th of $70,000.

Q Then does it appear that Mr. Mazzochi did not come in with Treasury notes twice on August 5th but rather came in once on August 4th and the second time on August 5th?

MR. JULIEN: Objection. Leading and suggestive.

THE COURT: Overruled. As a matter of fact, I think this is an exercise in futility because you are bound

by your pretrial order which says August 4th and August 5th.

MR. HART: I agree with your Honor. I simply wanted to clarify the record because, as it stood, it appeared as if he came in twice on August 5th.

THE COURT: I just clarified the record.

MR. JULIEN: I doesn't say "and", your Honor; I think it is "or".

THE COURT: It is August 4th and August 5th.

MR. JULIEN: No; August 4th or August 5th in page 2 of the pretrial order. That wasn't meant to indicate that the transaction had occurred on two separate days. It was meant to indicate that the transactions occurred on the single date which might have been August 4th or August 5th.

THE COURT: The date Royal came into possession is August 4th. I don't see any "or" there.

MR. HART: I'm sorry. I have to agree with Mr. Julien, your Honor.

THE COURT: Is there an "or" there?

MR. HART: Yes, your Honor.

(Discussion off the record.)

THE COURT: Did you give Mr. Mazzochi receipts for these bills?

THE WITNESS: Yes. He received receipts but

they were mailed to him at a later date.

THE COURT: You mean you didn't give him a receipt over the counter? He delivered a bearer bill to you without getting a receipt?

THE WITNESS: He agreed to take the official receipt when we mailed it to him.

THE COURT: Have you got a copy of that official receipt?

THE WITNESS: Yes. He would have gotten the top copy of these receipts which were made out the same day as the transaction.

THE COURT: In other words, the day of the sale?

THE WITNESS: Right.

THE COURT: Not the date of the receipt?

THE WITNESS: Right; the day of the sale.

MR. HART: Excuse me, your Honor. I think I can refresh the witness's recollection.

(Pause.)

THE COURT: It appears there are more trusting people in the world.

THE WITNESS: The authorization letter is for the sale of the Treasury bills, Exhibit B.

MR. HART: I didn't believe there was any problem about this, your Honor, and I was not going to be

putting this in.

BY MR. HART:

Q Mr. Santoro, can you identify the document which has been marked Exhibit F for identification?

A Yes. It looks like I did give him a receipt on August 4th. There is a receipt dated August 4th, "Received from Frank Mazzochi, Jr., $10,000 of U.S. of America Treasuries for sale at market, Royal National Bank of New York," with my signature.

MR. HART: I offer it in evidence.

MR. JULIEN: No objection.

MR. HALPERN: No objection.

THE COURT: Received.

(Defendant Royal National Bank Exhibit F for identif ion received in evidence.)

Q Mr. Santoro, you testified that on each occasion of these sales, you called the Federal Reserve Bank to make inquiries as to whether they were on the list of missing or stolen securities. Did you have any reason for doing that?

A Well, it was a procedure that had been set up regarding bearer Treasury bills.

Q Who set up the procedure?

A One person I trained under would be Ted Landberg.

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Q Are you saying then that you were following the procedures which he outlines to you during your training period?

A Right; the procedure for selling bearer bonds or bills.

Q How often did the bank have occasion to sell bearer Treasury bills?

MR. JULIEN: I object to that. I would not object to what he did. I object to what the bank did since his testimony is that he is not sufficiently acquainted with that.

THE COURT: During the six-month period of training under Mr. Landberg--

MR. HART: Plus the period when he was the acting head of the department.

THE COURT: --plus the period when you were the acting head of the department, do I understand that that was only for one week?

MR. JULIEN: Just the first week.

MR. HART: It has really never been quite clear to me whether Mr. Landberg was back in there between the August transactions and the September transactions.

MR. JULIEN: It isn't what is clear to counsel; it is what the record shows up to the present time.

THE COURT: But during that period of time, while you were interning under Mr. Landberg, had you become familiar with Treasury bills and the sale of Treasury bills?

THE WITNESS: They were very rare. There might have been one or two, tops, in that period; nothing that I can recall specifically.

Q That was during that period of six months or so prior to this transaction?

A Right.

Q Did the bank charge Mr. Mazzochi any fee or any commission for this sale?

A No, he was not charged.

Q Are you familiar with the nature of a bearer paper? Have you dealt with bearer securities or had you dealt with bearer securities while you were at the bank?

MR. JULIEN: No. Wait. Which is it going to be?

MR. HART: I withdraw the first part and I make the question:

Q Had you, during your period at the bank, prior to these sales, dealt with bearer paper?

A I can assume I had but I can't honestly say yes.

MR. JULIEN: I object to what he assumes.

THE COURT: Yes.

A I can't honestly say yes.

Q Had you, at any time, whether you were with Royal Bank or previously, dealt with bearer securities?

A When I was with the Trade Bank and Trust Company.

Q So you were familiar with bearer securities?

A I was.

Q At that time did you believe that bearer securities required some outside documentation in order to prove ownership?

MR. JULIEN: I object to that. Now he is making an expert out of him. And I didn't get any statement or suggestions that we were going to use this gentleman as an expert, sir.

THE COURT: You are not entitled to it because his deposition has already been taken.

During your experience in the banking business up to this point, were you ever required in any transaction you personally handled to obtain any documentation as to ownership with respect to bearer securities?

THE WITNESS: No.

Q As far as you know, was any document ever mailed to Mr. Mazzochi of any sort by the bank at an address given by him to the bank which was returned to the bank marked "Addressee unknown"?

A No.

Q When a bank, in your experience, takes an address of a customer, is there any purpose in taking the address except to be able to send him documents or papers?

MR. JULIEN: Now Judge, I realize that this is in the nature of cross-examination, your Honor, but in the context in which we are trying this case, this is really his witness and he shouldn't be suggesting and leading. All he has to do is say yes or no.

THE COURT: All he has to say is, What was the purpose of taking the address?

MR. JULIEN: Let him say it.

THE COURT: Tell us.

A The purpose of taking an address in opening up an account is basically for mailing bank statements or any documentation to the customer; also, it would give us verification that they are living there if the mail is not returned. And in opening a checking account--well, I guess that is--

Q As far as you can recall, was there anything on the face of the Treasury notes that Mr. Mazzochi brought in for a sale by the bank that was irregular or unusual?

A Nothing.

Q The notes then, as far as you can recall, were perfectly regular upon their face?

A There was no alteration, if that's what you mean. No.

Q Once the bank opened an account for Mr. Mazzochi, and money was put in that account, the relationship between the bank and Mr. Mazzochi was debtor-creditor, is that correct?

A That is correct.

Q And thereafter, as far as the bank was concerned, the money belonged to Mr. Mazzochi and he could take it at any time.

A That is correct?

Q And in the banking business is it considered unusual for a depositor to want to withdraw his money?

MR. JULIEN: Well, now, first, I don't think that within the context of direct this is an appropriate cross-examination. But secondarily, the objections to my asking him any questions other than what he knew at that time, all of this relates to experience he certainly has gathered in the years in between. First he is a poor clerk and now he is an expert.

MR. HART: There were many questions regarding the pulling of the money out of the account as if there

was something strange about a depositor making withdrawals. First, I would like to get that clarified. Then we can turn to the nature of the withdrawals.

MR. JULIEN: I object to it.

THE COURT: No, I think we are playing games here because this man at that time had no knowledge with respect to what was withdrawn. He testified to that. I am going to sustain the objection. Certainly we have got somebody else around who knows. You have got the bank statements. All you have got to do is put in the bank statements and show what was withdrawn.

MR. HART: Your Honor, I can do better than that. I can refer to our pretrial order in which it is stated that the money on deposit in Mr. Mazzochi's account was withdrawn in cash, and the cash withdrawals made by Mr. Mazzochi conform to the checks shown on Mr. Mazzochi's bank statements which have been marked as Exhibit D.

MR. JULIEN: Then what are we doing?

MR. HART: You can't get--all right. We have done it.

THE COURT: See, I'd almost given up looking at the pretrial order.

MR. HART: There was something in there.

(Pause.)

MR. JULIEN: In order to save reading time and note taking, may I have your Honor's permission to take Exhibit E for identification out just to have it photostated and returned?

MR. HART: Not only do I have no objection but I might have an extra copy.

THE COURT: Give him the extra copy.

MR. HALPERN: I would like to have a copy of that too, your Honor.

MR. HART: I have only one extra copy, your Honor.

MR. JULIEN: We will make a copy and give it to you tomorrow.

MR. HALPERN: That's perfectly all right.

MR. HART: Just because I want to make sure that the record is clear, I would like to identify these documents as they related to each transaction and then I will have no further questions.

With counsel's permission may I lead the witness through them for the sake of expediency?

MR. JULIEN: First, I think they speak for themselves and our brief will certainly say what their meaning is.

THE COURT: I think the record is clear with respect to those documents.

MR. HART: Then I have no further questions.

CROSS-EXAMINATION

BY MR. HALPERN:

Q Mr. Santoro, I think you testified briefly a few moments ago that you worked for another bank prior to the time that you joined the Royal National Bank.

A The Trade Bank and Trust Company.

Q How long were you there?

A 5 years.

Q And in that time what positions did you hold with that bank?

A I was a teller for 1 year, a note teller for 2 years, in the Loan Department for 1 year,--well, in the Loan Department for 2 years.

Q Now, in that period, when you were with the Loan Department, and with the other departments, except teller, did you have occasion to receive Treasury notes for sale delivered to you by customers?

A The Trade Bank and Trust Company, when I was with them, I don't believe they worked it through their Loan Department. I think they had a separate department

that handled the sale regarding Treasury bills.

I do recall with the Trade Bank that we did sell and buy stock for customers, but I don't recollect any Treasury bill transactions.

Q And did you have a broker through whom you dealt?

A Yes. That is correct.

Q Now, let's go back to the Royal Bank. Did the Royal Bank have a broker through whom it dealt?

A On the Treasury bills it was Merrill Lynch, Pierce, Fenner & Smith.

Q And do you recall testifying in the criminal trial page 135:

"Q Did the bank, in August and September of 1966, have a broker that sold Treasury notes?

"A Yes. We usualy dealt with Merrill Lynch, Pierce, Fenner & Smith for Treasury bills and bonds.

"Q I see. And the bank then was a customer of Merrill Lynch, is that correct?

"A Right."

Do you recall that?

A Yes, sir.

MR. HALPERN: I have no further questions.

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REDIRECT EXAMINATION

BY MR. JULIEN:

Q This separate department maintained at the Trade Bank for Treasury bills, what was that called?

A I'm not sure. I have no recollection at that time of handling Treasury bills in the Trade Bank and Trust Company.

Q I didn't ask you that.

THE COURT: He said he's not sure. You got an answer.

Q You said a moment ago--

A I believe there was another department involved.

Q You told us it was a separate department. You said "separate department."

THE COURT: And he said he's not sure what it's called. Leave it be.

Q You were never in that separate department working there, were you?

A No.

Q So that you didn't handle Treasury bills at the Trade Bank, correct?

A To the best of my knowledge, no.

Q Then the training you got with respect to Treasury bills was only at the hand of Royal with

Mr. Landberg?

MR. HALPERN: I object to that. We are re-hashing it and it is not part of redirect.

THE COURT: Yes. Sustained.

MR. JULIEN: All right.

Q With respect to the question addressed to you on the subject of addresses of customers, when you open an account for a customer, the kind of account that was opened for Mazzochi, here, one of the reasons you take an address is to verify that you are dealing with somebody who has a place and a residence which he furnishes, isn't that right?

A That is correct.

Q It is the business of the bank to know its customers, isn't that true?

A That's true.

MR. HART: Objection, your Honor.

THE COURT: I will let it stand.

Q Now, all these exhibits that have been shown you of bank statements, or bank documents relative to the credit company, at that time, in 1966, were you handling any transactions with the Credit Union?

A No transactions. The only connection I would have had with it in my capacity in the Credit Department

would be if another bank or somebody had called up for a credit reference and I would pull the file. Otherwise there was no connection other than that.

Q Do you have any recollection of ever doing that?

A No.

Q Giving a credit reference for this Credit Union?

A No.

Q You know that this Credit Union was just a small operation, don't you?

MR. HALPERN: Objected to.

THE COURT: Sustained.

Q Well, was it a small operation?

A I don't recall the size of the operation.

Q Well, did you ever check its balance?

A No, I never checked it balance, unless if I got a credit inquiry, then I would pull a balance card and give an average balance.

Q But you told us you have no recollection of ever doing that.

A It is a long time ago.

Q Did you, for example, ever make a loan to that Credit Union?

A I never made a loan to it. I am not aware

of the bank ever making a loan to it.

Q And so far as you are concerned, neither you nor anyone ever checked into the financial condition of that particular organization, did you?

A I never checked into it. As for any other bank employee or officer, I can't tell you.

Q And up to the year 1966 you had never come across any document showing that it had been checked by anyone else?

A No.

Q By the way, this man Mazzochi, who you say was President of this organization since '65, what was his business?

A What was his business?

Q What was his business?

A I have no idea.

Q You talked about this being a Credit Union of real estate people. Did you know that in '66? Did you?

A In '66?

Q That's right.

A I don't recall if I knew it at that time.

Q And you said something about it being composed of other people who were either important or well known

customers of your bank. Was that the situation in '66?

A Well, to the best of my knowledge, the individuals involved in the Mutual Credit Union were fairly well regarded customers of the bank.

Q Can you recall any of them that you knew personally?

A No.

Q Or that you ever dealt with in any respect?

A Well, at the time I might have dealt with some of them, without realizing it, on an individual basis or through their own corporations.

Q Without realizing their connection with what they had to do with the Credit Union would not be a matter that you knew at that time, is that right?

A That is correct.

Q And when you say that this Credit Union's account was non-borrowing, does that mean it had no line of credit with your bank at all?

A Well, I don't know if they had--I do not know if they had a line of credit but I knew it to be a routine non-borrowing account which just means that they maintained a checking balance. Whether they applied for a line of credit and had it approved and not drawn on it I was not aware of.

Q You are telling us that in '66 it was routine non-borrowing?

A Yes, from handling the credit file I knew it then. In other words, I was in the Credit Department a good part of the time before that.

Q And you had handled a credit file of the Credit Union?

A I went through most of the credit files in the bank either for one reason or another, an up-date or whatever.

Q Had you handled the credit file of the Credit Union prior to '66?

A I don't recall.

Q Now, when the first transaction involving the $10,000 and the second transaction involving the $70,000 occurred on one single day or on two days, are we clear that a very short time had elapsed between the two transactions?

MR. HALPERN: Objection.

THE COURT: Sustained. I thought you would never ask it. We have had enough of the 4th and 5th.

Q Had you, up to '66, ever been to this Credit Union, so-called?

A No.

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Q Or looked at its premises, if there were any?

A No.

MR. HART: Objection to this. I believe counsel has stated "Did you look at their premises, if there were any." I move to strike "if there were any."

MR.JULIEN: Why? Do you say there were?

THE COURT: Overruled. Please, no colloquy between counsel.

Let's do it, Mr. Julien.

MR. JULIEN: To "let's do it" I have to read what he read.

THE COURT: Read it and see whether we have got any more examinations on it.

Read it to yourselves.

(Recess.)

REDIRECT EXAMINATION

BY MR. JULIEN (cont'd):

Q Mr. Santoro, between September 15th and September 29th 1966, which you may accept as the period when there was a suspension on the $72,000 in the account, Mr. Mazzochi was coming to see you daily, wasn't he?

A Daily.

Q Trying to get his money out, right?

A He wanted to know what was happening with his money.

Q And this was almost on a daily basis, right?

MR. HALPERN: If your Honor please, this has been gone over over and over.

MR. JULIEN: We havent touched this subject yet.

THE COURT: This has not been gone over? I'm sorry. You said on a daily basis twice, I'm sure.

A Yes, he did come in regularly.

THE COURT: You know, fortunately or unfortunately, I too have been trained in the law, and I have a very retentive memory, not like a jury for whom you might have to be repetitious.

MR. JULIEN: You know that I am aware of that. It's only habit that makes me do that.

THE COURT: I understand that, and I'm going to

help you break it.

Q You told us that Treasury bills were to be handled with the brokerage office of Merrill Lynch; where did you get that information from?

A You mean sold through?

Q Yes.

A When I came into the department and I was being trained in any transactions that we had, purchases or sales, they were always through Merrill Lynch, Pierce, Fenner & Smith. I remember Bill Carter very well.

Q Do you remember any previous transactions that you handled with Bill Carter or was this something that was handled in the main office of the Royal National Bank?

A There probably were some purchases that we made through Bill Carter and Merrill Lynch, but for customers; in other words, if it was for a customer of the branch like this before this one occurred?

A Not sales but purchases.

Q This was a sale, right?

A Right, this was a sale.

Q And so, so far as your knowledge assists you in this matter, when you said that such transactions were to be handled by Merrill Lynch, sales up to this time had not taken place?

A That is correct.

Q Were you familiar with any Federal Reserve regulation requiring you or your bank to notify the Federal Reserve concerning any transaction exceeding a certain dollar amount?

A No.

Q Were you aware that withdrawals could be taken in cash?

A No, I was not aware of that.

Q You never heard of any requirement that any cash transactions exceeding $2500 or more were to be--I had said Federal Reserve; I meant the Treasury Department. That was wrong.

A Any large cash transactions, withdrawals or deposits, right. That is correct.

Q And all of his withdrawals from this account, all of Mazzochi's withdrawals from this account were to cash, were they not?

A That is correct.

Q Contemporaneously with any of those cash withdrawals at the time, was any notification given to the Treasury Department?

MR. HART: Objection, your Honor. I believe the witness has testified that he was unaware of the--

MR. JULIEN: Why are you telling him? Let him say. See how he suggests things to this man?

THE COURT: He is not suggesting. The witness has already testified that he was unaware of the cash withdrawals.

MR. JULIEN: All right, your Honor.

MR. HART: Very briefly.

RECROSS-EXAMINATION

BY MR. HART:

Q Mr. Santoro, when you dealt with Mr. Carter at Merrill Lynch, was he aware that he was selling these notes for a customer?

A No. When I spoke to Mr. Carter, I just told him for the bank. I did not mention any customer's name.

Q He knew you were dealing for the 149th Street branch, is that correct?

A That is correct.

Q And were any bank transactions conducted from the 149th Street branch which were not for customers?

A No, because the Cashier's Department was located at the main office. You mean any purchases for the bank itself?

Q Purchases or sales of securities for the bank itself, for its own account.

A No. That would be handled by the 48th Street office, the Cashier's Department.

Q And then when you sent the securities to Merrill Lynch, the slips did identify--

MR. HALPERN: I object to the form of the question.

THE COURT: Sustained.

MR. HART: I will rephrase it.

Q You prepared slips which were delivered to Merrill Lynch with the Treasury notes; is that correct?

MR. HALPERN: I object to it. The slip speaks for itself.

THE COURT: The slips are in evidence, Mr. Hart. I don't think this is proper.

Q When you said the Mutual Credit Union was a non-borrowing account, are you sure about that of your own knowledge?

MR. JULIEN: What is this? He said it. What are we doing now?

THE COURT: Yes. Are you trying to impeach your own witness?

MR. HART: He is not my witness.

MR. JULIEN: But you brought out that part of it.

THE COURT: Overruled. No colloquy, please.

Q When Mr. Mazzochi came in each day while this

money was in suspense, do you know whether anyone came in on his behalf to try to get the release of the money during that same period?

A When he first came in on a daily basis and he asked me the question, "When can I get my money?", I believe I referred him to Mr. McGraw or one of the other officers.

Then I was made aware, through conversation with the other officers, that he did have an attorney representing him to obtain the release of the funds, but that was just through conversation with officers in the bank.

MR. HART: No further questions.

MR. HALPERN: Just one question.

RECROSS-EXAMINATION

BY MR. HALPERN:

Q Mr. Santoro, you said that a check was held up after the second transaction; is that right?

A The check was held up on the last transaction.

Q Whose check was it that the bank received with respect to the sale of these bonds?

A (No response.)

Q Or Treasury notes?

A I would imagine it was Merrill Lynch's check.

Q You imagine that; do you know?

A I don't know.

MR. HALPERN: Thank you.

FURTHER REDIRECT EXAMINATION

BY MR. JULIEN:

Q When a transaction involved a sale of, or a purchase of something for the bank itself, that is handled downtown, right?

A The 48th Street office, yes. In other words, we didn't purchase any securities for the bank itself; just for our customers.

Q Right. And was that something you discussed with Mr. Carter from time to time?

A No.

Q But at any rate, when you sent down these securities, you even put your customers' names on the papers, didn't you?

A Right. If I did it for my own reference, it had been delivered for the account of, the procedure was to put in the customer's name on the delivery slip going down to the brokerage house.

Q Did you at any time get any inquiry from Mr. Carter or anyone at the brokerage concern, "Who is Mr. Mazzochi? How did he come into possession of these bills that you are selling to us?"

A No.

FURTHER RECROSS-EXAMINATION

BY MR. HALPERN:

Q You could have put any customer's name on there; isn't that right?

A Excuse me?

Q You could have put any customer's name on there, whether it was Mazzochi, John Jones, or Evelyn--whoever you got them from; is that right?

A That's right.

Q Was that for the purpose of your own bank records?

A It would seem so because it had no purpose for going down to Merrill Lynch because they didn't know we were selling them for a set individual.

MR. HALPERN: Thank you.

FURTHER REDIRECT EXAMINATION

BY MR. JULIEN:

Q Did you formulate the rule that required you to fill in "For the account of" on these slips? Was this something you were told to do?

A Something I was told to do.

Q And the reason for it, you are just speculating as to that, is that right?

A That's correct.

Q You don't really know?

A That's correct.

THE COURT: That is the end of it. Tomorrow morning at 10.

I am assuming that this witness is excused by all parties.

MR. JULIEN: Yes.

MR. HART: Yes, your Honor.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Good night, gentlemen.

(Adjourned to Thursday, August 7, 1975 at 10:00 a.m.)

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United States Fidelity & Guaranty Co.

vs. 68 Civ. 2054

Royal National Bank of New York, Merrill, Lynch, Pierce, Fenner & Smith, Inc.

New York, New York.
August 7, 1975 10:00 A.M.

(Trial resumed.)

MR. HART: Your Honor, before we call the first witness, may I simply confirm that I have my continuing objection to all testimony so that it may continue from day to day.

THE COURT: You have that objection.

All right.

MR. HALPERN: May I have it likewise, Judge?

THE COURT: Yes, sir.

MR.H ALPERN: Thank you.

MR. JULIEN: Are you ready,sir?

THE COURT: Yes, I am ready.

W I L L I A M C A R T E R, called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. JULIEN:

Q You are connected with Merrill Lynch, sir?

A That is correct.

Q Mr. Carter, are you the representative of Merrill Lynch that had some dealings with respect to the treasury notes in Royal Bank and Mazzochi back in 1966?

A I had some dealings with the Royal Bank. There was another man who I worked along with who has since retired whose account it was, actually.

Q Who was he?

A His name was Meehan. He is retired.

Q What was your position?

A You call it account executive.

Q Now, all I want at the present moment, are you here pursuant to a subpoena and did you produce your file in this matter?

A This is the subpoena.

Q At any rate, have you produced the file in this matter?

A I brought in confirmations of some trades that were done with Royal Bank which I gave to Mr. Halpern yesterday.

MR. HALPERN: And which I gave to you.

And there were also some slips on the Royal National Bank letterhead. It looked like they were sent along with the bonds when they were delivered.

MR. JULIEN: And you say that everything he gave you was delivered in this 40 for identification?

MR. HALPERN: That is correct. Show it to him.

Q Counsel tells us that whatever papers were given to him were given to me yesterday and they were marked by the clerk as 40 for identification. Would you look and see if those are all the papers which you turned over, please?

A Yes.

Q Mr.Carter, are these documents your own documents, the documents of Merrill Lynch, with respect to this matter, or are these simply copies which have been furnished to you out of either the court files or by the co-defendant, Royal National Bank?

A These I got yesterday from the Merrill Lynch legal department.

Q When you handled these transactions, or that part of if which you did handle, there were documents of your own company referrable to them, were there not?

A How do you mean?

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Q I mean that you had a confirmation which you sent out, you had an order which you received, there were delivery certificates?

A Here are the confirmations.

Q I don't want the copies that were furnished you by somebody else, I want those of your own company.

A Right here, Merrill Lynch. These are the confirmations of Merrill Lynch. Look at page 1.

Q Page 1 is --

A Those are --

Q Excuse me. The first page of 40 for identification has a legend on it reading Exhibit G.

A Yes.

Q Which corresponds with Exhibit G in the interrogatories filed by Royal National Bank. Do you see that?

A Right.

Q In your office, when you have documentation, you don't put Exhibit numbers on your papers, do you?

A I have no way of ever seeing any of these statements. In my capacity, I talk to the bank, buy or sell the securities. I don't have anything to do with the physical aspect of the bonds.

Q But when you buy or sell securities, Merrill Lynch has some documents of its own, does it no?

A It has copies of confirmations of every trade we make.

Q Well, this too seems to be a photostat. Where is the confirmation from your own office with respect to that?

A The confirmation would be sent to the customer of the Royal National Bank.

Q Doesn't your company have a file on this matter at all of its own, not what you got from the legal papers on file?

A You would have to check with the legal department then.

Q Well, when you were called, for example, or when you are called with respect to the sale of a treasury bill, don't you make some kind of notation somewhere?

A Write out an order, the order is put through, is processed, and that's it.

Q Where is the order you wrote out in these cases?

A Nine years ago?

Q Whatever.

A I don't even say that I wrote out the order.

Q Well, whether you wrote it out or some associate of yours wrote it out, where is the order?

A The confirmation is the --

Q I didn't ask you about that. Where is the order either you or your fellow associate doing the same kind of work with respect to this deal wrote out? Where is it?

A I don't know.

Q And is that true --

A It would be in the warehouse, I would presume, but I really can't giveyou an answer to that.

Q And where are these -- well, have you made any search for your documents in this matter, not what was given by Royal, but your documents? Have you made any search for them ?

A I only got this subpoena late Monday afternoon. I didn't even know what it was all about.

Q Upon receiving the subpoena, did you not communicate with counsel who is appearing for the defense of Merrill Lynch in this case?

A I consulted our legal department.

Q Did you consult with Mr. Halpern?

A No, I didn't. I didn't know who he was.

Q Have you consulted with him up to the present time?

A Yesterday was the first time I saw him.

Q Since yesterday have you made any attempt to find your own documents, that is, your company's documents with respect to this, including the orders which were written out upon receipt of the order from Royal?

A I brought these documents which you see from our Merrill Lynch legal department yesterday.

Q You did nothing else?

A That was all I was given. That is what they had on record.

Q This is not the only transaction that your company has had with Royal National Bank and another department at its main office, right?

A That's correct.

Q You dealt with Royal principally at its main office, correct?

A 1212, I think it was, Avenue of the Americas.

THE COURT: I think it might help if you were to stand back there, as we indicated yesterday. Why don't you use the lectern?

Q Is there a file with respect to Royal National Bank from its main office respecting its main office transactions?

THE COURT: It is completely immaterial.

MR. JULIEN: I just wanted to --

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THE COURT: And something that should have been gone into ten years ago. I am not going to waste my time or the other gentleman's time because this is a complete waste of time. It is a matter of discovery that should have been gone into for yea these many years.

MR. JULIEN: That is all I have of this witness at this particular time, because I promised to put on another witness this morning whoc must get away, but we shall put this gentleman on call, with your Honor's permission, or maybe Mr. Halpern can arrange to put him back.

MR. HALPERN: Well, can he leave and go back subject to our cross?

THE COURT: Who are we going to put on next?

MR. JULIEN: Mr. Kayner, who we promised to get rid of today.

THE COURT: All right, you are excused. And you are subject to recall.

(Witness excused.)

R O B E R T I. K A Y N E R, called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JULIEN:

Q Mr. Kayner, back in 1966, specifically in

August of 1966, you were then checked with the Royal Bank, were you not?

A That is correct.

Q And your position with them at that time was credit officer?

A Yes, I was an officer.

Q Please be kind enough to keep your voice up just a trifle more.

A Sure.

Q And on August 4 or August 5 of 1966, you were one of the credit officers of this bank on the platform?

A That is correct.

Q And that term "on the platform" is a colloquialism known to bank people meaning those who are there acting and passing on matters of credit, is that right?

A That is correct.

Q Now, prior to August 4 or August 5, had you ever had any personal dealungs with a man named Frank Mazzochi?

A Personal dealings?

Q That is what I said.

A No.

Q Had you ever passed on any applications he had made for any loans?

A I don't remember.

Q Other than some relationship he had with a credit union, did you know him to be a person who had no personal bank account with your institution?

A Would you repeat that?

Q You knew he had no personal bank account with your institution?

A At this moment I don't know. I may have known it then. I don't know that to be a fact. I would have to see the testimony that I gave previously. I know he had accounts at the bank. I don't know whether they were personal or business. At this point I don't know. I may have known that.

Q When did you last see your testimony?

A Five years ago, six years ago.

Q Haven't you seen a transcript of your testimony since then?

A Well,l I saw the testimony after when it was completed. I think there were different attorneys that took it in this court or in a room in this court, and I saw the completed testimony. That had to be many years ago. I haven't seen it since.

Q Have you talked with Mr. Hart or anybody representing the Royal Bank within the last week to ten days?

A The first time I have talked about the case was briefly with you.

Q In the courtroom?

A Yes.

Q Have you talked to Mr. Hart about it or anyone representing the bank?

A No, not really. The only talk we had was when we were sitting in the witness room now, and that was not really about the case; it was just how can anybody remember after all these years.

Q Did anybody come to see you at your office with respect to this case?

A No one.

Q Did anyone show you a booklet containing your testimony.

A You mean recently?

Q At any time after you signed it.

A No.

Q Was a copy given to you or mailed to you?

A I think so, but I'm not 100 per cent sure.

Q Well, when you got the subpoena to come to this court respecting this matter, did you look to see whether you had this transcript?

A No.

Q What?

A No.

Q You made no attempt to refresh yourself before coming here?

A No.

Q Addition to the transcript of the testimony, were you shown at any time statements or testimony of others in the employ of Royal National Bank concerning these transactions with Mazzochi?

A No.

Q All right.

Now, you testified with respect to this matter on two occasions, did you not?

A I believe I testified in his critimal trial. Then this testimony, I think -- was it a deposition? -- that was the two times.

Q Now, since testifying at the criminal trial did you ever or were you ever shown the testimony which you gave there?

A At the criminal trial?

Q Yes.

A It may have been before that deposition. I'm pretty sure the deposition was after the --

Q And by whom, so far as your recollection

serves -- was it by Mr. Hart that you were shown the criminal testimony?

A Well, if I was shown the criminal testimony I am sure it would have been by Mr. Hart but I really don't recollect.

Q What do you do now, by the way?

MR. HART: May I hear the answer before this?

(Answer read.)

A I am the president of a company called Scotty Commercial Corporation.

Q In the finance business.

A It's in the equipment finance business, yes.

Q Now, so far as your memory serves you, you had not acted with or dealt with Mr. Mazzochi prior to these transactions involving the Treasury bills that we are interested in here, is that correct?

A That would be,as far as my memory serves me, probably correct, yes.

Q And when first he approached you with respect to the Treasury bills you were then one of the credit men on the floor?

A That is correct.

Q He came in to see you on that occasion,

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talked about Treasury bills --

THE COURT: What occasion?

MR. JULIEN: On the first occasion, and I'm going to get to that date specifically in a little while.

THE COURT: Let's do it in the question.

MR. JULIEN: I will put it now and I am going to clear up the exact date in a moment.

Q -- August 4th or August 5th, he came in and talked to you about some Treasury bills, true?

A True.

Q He told you he wanted you to sell some stuff for him; wasn't that the language he employed?

A I really do not remember the language. I know that he wanted to sell some Treasury bills. The language used is far from my memory at this point.

Q Neither one of us is able to hear you.

A I say I do not remember the language used specifically. I know the general tenor of the conversation. It was to sell fresh bills.

Q Well, at the present time he wasn't showing you any Treasury bills, and you weren't looking at any Treasury bills, and doesn't it serve your recollection that he said he wanted you to sell some stuff for him?

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Isn't that true?

A I don't remember him saying that he wanted to sell stuff.

Q All right. Was this first conversation with Mazzochi at your desk?

A Yes, I think so.

Q At the bank?

A Yes.

Q In the examination which was taken of you in this court on October 14, 1969, weren't you asked this question and didn't you at that time give this answer --

MR. JULIEN: This is Kayner's deposition, your Honor. I think you may have it.

THE COURT: I think it might be a good practice to file all of these depositions with the court. My recollection is that I don't have it.

Q In that examination, at page 24, line 15, weren't you asked the following questions and didn't you then give the following answers:

"Q Do you remember the occasion when Mazzochi came in and presented this $10,000 note?

"A He never presented a note to my recollection. He just asked me to sell it and I said I would. I told Santoro to get the note from Mr. Mazzochi and sell

it to him. I don't know if Mazzochi had the notes when he first came in at that time. He just sat down at the desk and asked me to sell stuff for him, which I said I would"?

True answer?

A I'm sure it was true at the time. Are you asking me to -- I don't remember the testimony. I'm sure what I said then was a better recollection than I have now.

Q Well, now, this man first comes in without any notes and discusses your selling something for him, and you say you will, right?

A Okay. Yes.

Q You don't know how much it is going to be, do you?

A I don't know. My testimony might have indicated that he would have mentioned an amount.

Q No, it doesn't.

A Then I assume that he didn't -- are you asking me -- I don't know your question right now. He discussed selling Treasury bonds with me, and apparently I said that I would sell them for him.

Q And no amount was fixed?

A All right.

Q Is that correct?

A Well --

Q Isn't that the best of your recollection?

MR. HART: Your Honor, if counsel is stating to the witness what appears in prior testimony, I think that --

MR. JULIEN: No, please.

THE COURT: No. This is in the form of an objection and it may be a relevant objection to the form of the question, because you say his deposition doesn't say it but no one may have asked him that question.

MR. JULIEN: I am asking now for his recollection after having been refreshed by what I have read to him thus far.

Q Was any amount fixed?

A Not to the best of my recollection.

Q All right. And at that time did you know that Mr. Santoro was the acting head of the loan department?

A I'm sure I must have known it at that time.

Q And you knew Santoro was somebody substituting for Mr. Landberg who was actually the head of that department?

A I'm sure I must have known it at the time.

Q So that you were aware that if you gave approval of any transaction, the only other person who would act in connection with it for the bank would be Mr. Santoro, is that right?

A I would say that was right.

Q All right. And then did you tell Santoro that he could sell notes for Mr. Mazzochi?

A I must have told him that he could sell the notes, yes.

Q Now, Mazzochi told you that these were bonds, or Treasury notes -- we tend to use those terms interchangeably but we are talking about the same documents -- belonging to his family, did he not?

A I think that was the term used, yes.

Q Did you know this gentleman's family?

A I'm sure not. You mean personally?

Q Personally or in business or in any way, did you know them.

A I doubt it.

Q And the answer, to the best of your recollection would be no, is that right?

A To the best of my recollection, yes. No is the answer.

Q Did you ask Mr. Mazzochi which member of his

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family or members of his family were the owners of those instruments that you were going to sell?

A I don't recall.

Q Well, would that not be a normal inquiry to be made before handling such a transaction?

A I don't know if that's really a normal inquiry or not. It's hard to say. I don't know. It's a very subjective question. I really don't know the answer to it.

Q Well, you knew that Mr. Mazzochi wanted to get the avails of the sale of these instruments for himself; you knew that, did you not?

MR. HART: Objection, your Honor.

THE COURT: What is the objection?

MR. HART: I have no objection to him asking if Mr. Mazzochi stated to him what he was going to do with the proceeds, but the form of this question is intended to direct the witness' recollection as counsel would like it to be directed.

MR. JULIEN: That's what cross examination is all about, and I am entitled to treat this man as if he was on cross examination.

THE COURT: The answer to the question, Mr. Kayner?

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A Well, I mean if we are selling the bonds for Mr. Mazzochi, or whomever, it is obvious that he will get the proceeds of the sale. What he does with the proceeds afterwards is up to him.

Q I am not coming to that.

THE COURT: He has answered your question.

Q So that you were aware that he did not claim to be the owner of these bills but he wanted to get the cash proceeds?

MR. HALPERN: I object to this as redundant. He has already testified as to what happened. Now we are going back again and rehashing the same facts in a different form.

THE COURT: I will let him answer this question.

Q Please answer it.

A Would you repeat it?

(Question read.)

A To the best of my recollection, he had said that he was selling it for his family, which would indicate that he was not the owner.

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Q Were you going to turn over the proceeds to him or was it you who said he would have to open an account.

A That I don't recollect at all, our asking him to open an account.

Q You don't recollect asking him to open an account, did you say?

A That's right.

Q Did you become aware that he had opened and account in his own name at the behest of somebody at the bank by August of 1966?

A I may have been aware of it then, but it sounds like something new to me right now.

Q On August 9th of 1966, a first withdrawal in the sum of $35,000 was made from that account to cash, aren't you aware of that? Doesn't that sound familiar to you?

A Well, as far as the date, I coulnd't recollect at all. I eould imagine,the way you are phrasing the question, I may have approved the withdrawal, but as far as recollecting it, no. It's not -- it doesn't stick out in my mind.

MR. JULIEN: To save time, can we have a concession -- oh, we don't need a concession.

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Q You gave a statement to Mr. Hart in this matter representing the bank as early as September of 1969, did you not?

MR. HART: Objection. I'm sorry.

A I don'r remember it, but if you have a statement that I signed, then I must have.

Q Before I ask you about statements that you signed, and I don't say that I signed this, by the way, I want to make that representation, weren't you interviewed by the firm of Hart & Hume in the year 1969 concerning what had happened with respect to your transactions with Mr. Mazzochi affecting these Treasury notes?

A I really don't remember being interviewed by them. I would have imagined that I would have talked to them before the testimony I gave in this court in '69, but I don't remember a specific meeting.

MR. JULIEN: Can I have Defendants' Exhibit E?

Q I show you a paper which has been handed to us by Mr. Hart as a fact summary of employees of the Royal National Bank of New York. I want to direct your attention to a paragraph dealing with Robert I. Kayner and ask whether this refreshes your recollection

that on August 8th of 1966 you were the one who approved the withdrawal of, it says there, $25,000 from the account of Mazzochi.

MR. HART: I object to the statement as to what the document says, your Honor. It is not in evidence.

MR. JULIEN: I ask if it refreshes his recollection.

THE COURT: I'm going to sustain the objection. It seems to me that you are asking him whether it refreshes his recollection as to that.

MR. JULIEN: Yes, after reading it, does it refresh his recollection.

THE COURT: All right.

A No, but as I said before, I don't doubt that I had approved it. We approved an awful lot of checks every day. It doesn't refresh my recollection of this specific item.

MR. JULIEN: I will offer in evidence, if your Honor please, that part of defendants' Exhibit E dealing with Robert I. Kayner, the first sentence of the final paragraph --

MR. HART: I thought he was going to read. I will wait until he is finished.

MR. JULIEN: I am not reading.

-- the first sentence of the last paragraph dealing with Mr. Kayner on page 4 of that document.

MR. HART: I object, your Honor.

MR. HALPERN: I object to that, too, as not binding upon me.

MR. JULIEN: I am not offering it against him. I think that is clear.

MR. HART: This is my work product which I prepared to the best of my ability, based upon the information available to me before I had an opportunity to review this matter in detail with the witnesses,and it is simply my view at the time of the preparation of this of what happened. It is attorney's work product, I don't think it is proper.

MR. JULIEN: If your Honor please, this is not attorney work product, because it has gone far beyond that. Once having been revealed, as it was to Mr.Santoro, it

loses that kind of confidentiality.

Now, I submit to your Honor that now, under the July 1st effective rules, any statement made orally or in writing by a witness is now admissible. It doesn't even require a signature. It is admissible.

THE COURT: It is excluded as work product.

MR. JULIEN: May we deem that paragraph to have been marked as an offer of proof on my part, your Honor?

THE COURT: Sure.

MR. JULIEN: Very good.

THE COURT: The question occurred to me, Mr. Julien, you are now about 30 minutes with this witness, his recollection is not there. You have tried to refresh it in any number of ways. We have a deposition, we have his eestimony at the criminal trial. Let's use one or the other. Why should we go and waste time?

MR. JULIEN: Well --

THE COURT: Enough.

MR. JULIEN: -- I am extremely interested in the fact that a paper issued by counsel and shown to witnesses can be disavowed in this fashion.

THE COURT: We are not on that subject matter. We are beyondit.

MR. JULIEN: All right.

THE COURT: What I am asking you in effect is, why can't you use the deposition of Mr. Kayner instead of his testimony? because you are going to keep going back to his testimony.

MR. JULIEN: Counsel is showing me some other deposition, not his, your Honor.

THE COURT: What I am talking about, why can't you use his deposition?

MR. JULIEN: I will see if there is a reference to the particular thing in interest.

THE COURT: I am going to take a recess. You discuss it with your associate or your partner and find out whether this witness is going to be of any use to us at all. I am not going to waste our time all day long to refresh his recollection and then reading in the deposition.

We will be in recess. You may step down. Don't discuss the case with anyone.

(Recess.)

End 2B

(In open court.)

THE COURT: All right, Mr. Kayner, you are still under oath.

BY MR. JULIEN:

Q Mr. Kayner, I am going to show you what purports to be a copy of a check, part of Exhibit 34 for identification and ask you if you can identify that check?

A Well, other than the fact that it is drawn on the Royal National Bank, I wouldn't be able to tell you anythingmore. I can tell you what the check says and all of that,but it doesn't -- I don't see an initial --

MR. JULIEN: Subject to connection, your Honor.

Q Do you know a Rose Musatello who at that time was an employee of the bank?

A Yes.

Q She says that the initials appearing in the upper left-hand corner of that check are your initials.

A Well, it is very possible. You can't see it from this photostat.

MR.JULIEN: We will supply that proof, if your Honor please.

I am going to offer in evidence this single check dated August 8, 1966, which is part of 34 for identification., I will ask that it be separated from the

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rest.

MR. HALPERN: May I see that, Mr. Julien?

MR. JULIEN: The second page has the reverse side of the same check, your Honor.

For the record, I wish to state that on the same pages, since this appears to be a recording device, there are, on the top and bottom of each page, an unrelated check dealing with a party named Irving Mittleman, and some association incorporated. They are not involved here.

THE COURT: Show it to Mr. Halpern.

(Pause.)

MR. JULIEN: It might clarify the record, if it is admitted, we can strike the other ones that do not appertain.

THE COURT: All right.

(Pause.)

MR. HALPERN: Two checks don't apply. Just the one middle one applies, that is all.

MR.JULIEN: Just the middle one.

MR. HALPERN: Let's have the record clear because the bottom one doesn't apply and the top one doesn't apply.

MR. JULIEN: Just a moment.

Could we use your copy? It is more legible

than ours.

(Discussion off the record.)

MR. JULIEN: May the record indicate that counsel agree that we can delete those --

THE COURT: It isn't necessary for you to indicate that at all. Just offer the check.

MR.JULIEN: All right, just the check and the reverse side, your Honor, as Exhibit 34.

THE COURT: It will be received.

xxx (Plaintiff's Exhibit 34 for identification was received in evidence.)

Q Now Mr. Kayner, there has been testimony here, which I ask you to accept, that this account for Mazzochi was opened on August 9 of 1966 in which case this exhibit would indicate, would it not, Exhibit 34, that you were approving for cash, up to the extent of $25,000, a withdrawal for Mazzochi before the avails of the first treasury bills had cleared, correct?

MR. HART: I am sorry, your Honor. I missed the last part of his answer. Just the last four or five words.

THE COURT: That is why I want you to stand back, Mr. Julien, because we are having this all the time.

(Question read.)

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MR. HART: Objection, your Honor. I don't believe the witness has testified that he approved this check.

MR. JULIEN: Just a moment.

THE COURT: That's right. That is the standing objection.

MR. JULIEN: Your Honor, you may recall that we are trying to take this seriatim. You will recall that I told the witness and I told the Court subject to connection, and we have the testimony here, they have it too, another witness of the bank said he is the one who approved the check, and that the initial appearing on the check is his.

That is in the testimony of Rose Moscatello.

Shall I read it? I will offer it in evidence.

THE COURT: Are you aware of that?

MR.HART: I am aware that Miss Moscatello testified but this witness said that he can't say that those are his initials, and I was objecting on the grounds that this witness has not acknowledged that he has approved the check and therefore a question framed in that context would be improper.

THE COURT: YOur copy appears to be somewhat better than Mr. Julien's copy and that was the one that

went into evidence, wasn't it?

MR. JULIEN: No, this is still another copy that we found.

THE COURT: Well, show him that. There appear to be some initials up in the upper left-hand corner.

THE WITNESS: Those look like my initials.

MR. HART: I withdraw my objection.

A Apparently that check was cashed on August 8th. You are stating that the account was opened August 9th?

Q That's right.

A That doesn't seem to connect properly.

Q In any event --

A He couldn't cash the check on his account before it was opened.

Q Well, the record here show that it was opened on August 9th. You were approving a cash payment, were you not, on August 8, which was a Monday?

A Well, forgetting about the availability or anything else, I can't approve a check on an account that isn't opened yet. If I approved it on August 8th, the account must have been opened on August 8th.

Q I show you Exhibit 36 in evidence, do you see the signature card for the opening of this account?

A Yes, I see it.

Q Do you see what date appears on it?

A I see what date appears on it.

Q It is August 9th, right?

A Well, that is the date --

Q Is it right?

A Yes. That card has the date of August 9th on it.

Q Now, according to the calendar, if I am incorrect counsel will correct me, August 5th was a Friday, August 8th a Monday, August 9th a Tuesday. According to this, you had already approved for a cash withdrawal by this man the sum of $25,000 even before the formal opening of the account, isn't that right?

A Well, I -- according to the dates, it is right. I am sure that there is something wrong with the dates there. I am sure there has to be something wrong with the dates.

Q Well, let's ask another question. The first transmittal of the treasury notes in this case to the Merrill Lynch brokerage house took place on that Friday, August 5th, 1966. You are aware of that, are you not?

A No.

Q Well, before hunting for that in your testimony, just refresh yourself by looking at Plaintiff's Exhibit

8 in evidence (handing).

A Okay.

Q Saturday and Sunday, of course not being banking days, that following Monday the avails of these treasury notes couldn't possibly have cleared by this time, could they?

A I am not familiar with how fast that money would be transferred from the brokerage account to the bank on treasury bonds.

THE COURT: Again you are not doing it, Mr. Julien. You are not doing what I told you to do. Unless you are showing him something, go back to the lectern.

MR. HART: We did have testimony on this very subject yesterday. We had testimony from the witness who testified on those very facts.

MR. JULIEN: What has that got to do with what we are doing here?

MR. HART: His testimony was inconsistent with your question.

Q Why would you have to approve a check for the withdrawal of cash from a bank account?

A Well, it is possible that there were uncollected funds in the account.

It is possible -- you showed me something earlier which indicated that the money was available.

It just hadn't been credited to his account yet. That was, I think, that paragraph that you had me look at from Mr. Hart's work papers.

Q You are refreshing yourself now from the statements of witnesses which emanated from Hart & Hume?

A No. The statement that you showed me.

MR. HART: Objection to the type of statements of witnesses, your Honor.

A It was my prior testimony or my prior discussions with Mr. Hart.

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MR. JULIEN: That's Defendant's Exhibit E, if your Honor please, for identification.

THE WITNESS: I think that said something to the effect that the money was credited from the brokerage house but that it hadn't gotten into his account yet.

Q Then your best answer to that is the reason you would have to initial a cash withdrawal from this account was that it is probable that the avails of the notes had not yet been credited to his account, is that correct?

A That's probably so, yes.

Q All right.

Now, at the time that you initialed this withdrawal, the first withdrawal in the sum of $25,000 from his account had you, up to that time, communicated with his family in any shape, any manner or any form?

A I don't recollect but I don't think so.

Q Had you, up to that time, ascertained that person or persons in his family who were the true owners, according to him, of these Treasury notes?

A I don't think that was ever ascertained.

Q You never asked that question, did you?

A I didn't say that. I said I don't think

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that was ever ascertained.

Q Well, you made no effort to ascertain it, did you?

A I really don't remember.

Q So far as your memory serves you, you did not, is that correct?

A No.

MR. HALPERN: Objected to. He said, "I really don't remember."

THE COURT: Sustained.

MR. JULIEN: If your Honor please, I am not arguing the ruling --

THE COURT: Ask a question.

Q Now, before you had this conversation with Mazzochi on the subject of selling stuff for him, was there any requirement that Treasury bills be approved by you for sale?

A I don't quite understand your question.

Q Was there any practice in the bank that required that a credit man pass on a transaction where somebody wanted to sell bearer Treasury bills?

A No, I would say that any officer with authority could do that.

Q Any officer?

A Yes.

Q This wasn't something that could be handled by Mr. Santoro alone?

A No.

Q Even though they were bearers?

A I don't really remember exactly the guidelines that the bank had on each specific --

Q Did it have any guidelines?

A I'm sure they did. There must have been some sort of operations guidelines for that sort of thing but I'm sure it had to be an officer to do something like that.

Q Were they written guidelines, so far as you recall?

A I don't really recall. I would think there had to be some sort of operations memos,or something like that, some place.

Q Was the purpose in having a credit officer like yourself approve a transaction of this type so that some inquiry could be made about the transaction and about ownership or the right of possession?

MR. HALPERN: I object to that.

MR. JULIEN: It is not offered against him. I don't know where he is in a position to object.

This has to do with the bank.

MR. HART: These were apparently not rules created by Mr. Kayner if they were rules at all.

MR. JULIEN: That surely is not a proper objection.

THE COURT: How would he know what the purpose of it was unless he had created the policy?

MR. JULIEN: I am entitled to test what his knowledge was respecting that.

THE COURT: Do you have any knowledge of that as to what the purpose was?

THE WITNESS: No, not really, sir..

BY MR. JULIEN:

Q Well, then when you were either approving or disapproving Mazzochi's desire to sell these notes, you didn't know for what purpose your approval was required?

A Are you relating to me specifically? What I have indicated to you is that it could have been approved or disapproved by any of five or six officers in that branch. It was happenstance that it came to me.

Q And you didn't know why your approval was required?

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MR. HART: Objection. That's the same question put differently.

MR. JULIEN: I want an answer.

THE COURT: I will let him answer it.

A Well, my approval -- a bank officer's approval would have been required because an officer is felt to have more judgment or to know the customers, whereas a clerk or a department head wouldn't. They don't have contacts with the accounts whereas the officers do.

Q Now, you told us before that you cannot recall any particular contact with this man before, is that right?

A That is correct.

Q By the way, this credit union account, was the average balance of that account about a thousand to two thousand dollars?

A I wouldn't have the slightest recollection of that.

MR. JULIEN: Page 56 of the witness' examination before trial, line 13:

"Q Were you acquainted with the balance kept on account by the Mutual Credit Union?

"A Yes, I was.

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"Q Is that the answer you gave to Mr. Rotger?"

I interpolate, your Honor, Mr. Rotger was the district attorney so they are there referring to previous testimony.

"A Yes.

"Q Did you also make this answer to the following question asked by Mr. Rotger:

"'Q Can you tell us, sir?

"'A I would say they average in the low four figures. It would be $1000, $2000, in that area.'

"Did you make that answer?

"A Yes."

Q Does that refresh your recollection?

A No, but I'm sure that my recollection at that time was a lot better than it is now.

Q So did you check to see whether this man had personally an account with the bank when you were approving for Santoro to take notes in an unnamed amount?

A I don't recollect what I did at that time. I'm sure my testimony indicates that I knew certain things at that time.

Q From the same examination, page 51 --

MR. JULIEN: Forgive me for just one mo-

ment, your Honor.

(Pause.)

Q While we are getting that, you knew that Mazzochi had no account of his own; you knew that, didn't you?

A No. I still don't know it. You showed me a card now that indicated that he opened up a personal account right after the sale of the bonds. Well, that's refreshing my recollection. I probably knew it at the time but I didn't know it when I entered the courtroom.

MR. JULIEN: At page 52 of the same examination, referring to Mazzochi:

"Q Does that mean that he didn't have any account in his own name prior to that date?

"A It would be correct."

And that date, if your Honor please, refers to August 4th or August 5th.

Q You never had any transaction of any kind with Mazzochi, prior to August 4th or August 5th, involving any substantial sum of money, did you?

A Me. No, not that I remember.

Q Or with any member of his family, correct?

A Again, not that I remember.

Q Before approving that first $25,000 withdrawal in cash as early as August 8th, did you at that time attemp to communicate with any member of his family?

A Not that I can recollect.

Q And you had no authorization,at the present time or at any time, from any other member of the Mazzochi family authorizing Frank Mazzochi, Jr. to sell these notes, did you?

A Not that I recollect.

Q Now, the signature card, Exhibit 36, which I showed you before, has both an address and a telephone number for Mr. Mazzochi. Did you at any time, either telephone that number or communicate in any fashion with the address listed for this gentleman to see whether either one was authentic?

A Not that I recollect.

Q Did you secure any telephone number for the Mazzochi family?

A I don't remember.

Q As far as you recall, you did not?

A I don't have the slightest recollection of it.

Q By the way, this conversation that you had with him on that first occasion about selling this

stuff, was that the only conversation you ever had with him with respect to the series of transactions that thereafter took place?

A I don't recall.

Q Now, sir, you were the credit officer who approved not only the first $10,000, the $60,000, but the next series which came in on the 9th of $70,000 correct?

A I'm sure you have the records there.

Q Well, there has been testimony to that effect.

But did you, after your first conversation with Mazzochi, do any more talking, for example, when the batch of $70,000 in Treasury bills came in, the third batch,which would be August 9th? Did you talk to Mazzochi again?

A I really do not remember.

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MR. JULIEN: From the examination, your Honor, page 21, Mr. Kayner's examination:

"Q Do you remember any conversation with Mr. Santoro about your approval of the second batch of notes?

"A None."

Q Didn't you say in the criminal case, where you testified at page 79, didn't you give this answer to the following question, page 78:

"Q Did you receive the bonds?

"A Personally, no.

"Q When you say 'personally,' did you see any of the bonds?

"A Never"?

MR. JULIEN: This, by the way, your Honor, was on January 16, 1968, the date of his testimony in the criminal court.

Q After learning that these bonds belonged to some member or members of the Mazzochi family you never asked to look at these bonds, did you?

A I don't recall asking.

Q You personally made no note of their serial numbers, did you?

A Personally?

Q Yes.

A Well, I couldn't very well have made a note of the serial numbers if I never saw them.

Q You never asked that they be produced for you?

A I don't remember if I asked or not.

Q You made no inquiry at any other source than Mazzochi himself about these securities, did you?

A I don't remember.

Q Have you ever been shown any note? Have you been shown any testimony? Have you been shown any statements or documents of the bank which would indicate that you had inquired anywhere else other than of Mazzochi concerning the ownership or right to these notes?

A I don't remember seeing it.

MR. HART: Was the answer "I don't remember"?

MR. JULIEN: "I don't remember seeing it."

Q Didn't you say in that examination -- I beg your pardon -- in the criminal trial, when you were asked by the district attorney this question, page 79:

"Q What happened then?" referring to your first conversation with Mr. Mazzochi.

A I informed our loan department that he would be giving them 70 -- well, $10,000 worth of bonds, and they shoudl sell it for him, and subsequently another $60,000, and they should sell it for him. They received the bonds. They received the sell order. These are sell orders, and that in effect was my last contact"?

Did you say that?

A You are quoting from my testimony. I will accept it. I don't remember saying it but I will accept it.

Q But you accept it.

MR. HART: Objection, your Honor.

MR. JULIEN: Counsel, you will agree I'm reading it accurately?

MR. HART: Yes, but I want the question to the witness to be clear as to whether he's accepting the substance of the testimony or Mr. Julien's correct reading of the testimony. I think the record is not clear on it.

A I accept your correct reading of it.

Q Don't you accept that you testified accurately in '68 about this?

A Yes, but I don't remember having said that.

Q Don't you remember that all you are talking to Mr. Mazzochi was only on one occasion? Don't you remember that?

A I have testified that I remember talking to Mazzochi on one occasion. I don't remember if I talked to him subsequently.

Q In the criminal trial, page 91, by the district attorney:

"Q On how many days did you talk to Mr. Mazzochi with with regard to the United States Treasury notes?

"A Only one day.

"Q On one day? Whatever your conversation was it was on one day?

"A That is correct."

You accept the substance of that, do you, as truthful?

A Yes.

Q We know from the testimony here that after the first transaction and the second transaction involving Treasury notes, Mazzochi came in on August 9th with $70,000 more. You have no recollection, and according to this testimony you had no further conversation with him on that day, is that correct?

A That's correct.

Q As far as this testimony shows and your recollection serves you, he did not come to your desk that day with respect to this additional series of notes, is that right?

A That's correct.

Q After your initial approval telling Santoro he could sell this stuff, from that time on the subsequent transactions were handled by Santoro, is that right?

A I couldn't testify to and I don't recollect it either. In other words, Santoro would have sold any other Treasury bonds for Mazzochi no matter who approved it. No matter who had approved any subsequent sales, he handled -- that was his job.

Q But on August 9th the officer who signed the approval for the additional $70,000 of Treasury bills taken in by Santoro was you; do you accept that? That's the testimony. That's what the exhibits show.

A If that's what the exhibit shows, then it must be so.

Q So that on August 9th, so far as the transaction was concerned, this was being left to Santoro and probably at the end of the day you would initial a number of documents and that might be included.

MR. HART: Objection, your Honor, that is not part of the testimony. The witness said he doesn't remember.

Q I'm asking you --

THE COURT: Wait a minute. I think it really ought to be changed as to form.

MR. JULIEN: I will be delighted to do it, your Honor.

Q Haven't you said somewhere, and doesn't it meet with your recollection, that since you had no further conversation with Mr. Mazzochi on August 9th your approval may have been secured by Santoro at the end of the day and not necessarily at the time the transaction was taking place?

A It's possible. I think it unlikely, but it's possible. But I have really no recollection of when it took place.

Q There was such a practice, was there not, that a credit officer would be presented at the end of the day, rather than when a transaction was taking place, with a number of documents which he would initial or sign?

A Certain things were presented at the end of the day, but certain things were presented during the

day if the loan department felt that it should come to the credit officer's attention before the transaction was completed.

Q You hadn't handled any Treasury bills or notes at that bank, that branch, in any such denomination as occurred in the Mazzochi case, had you?

A Had I?

Q Yes.

A I think probably at one time or another I handled substantial sums of stocks and bonds for various customers.

Q Would you get back to my question? Had you handled Treasury bills in such size as approximates this Mazzochi transaction?

A I think that --

THE COURT: He limited it to the branch bank where you then worked.

A I think that I probably handled stocks and bonds of that denomination for other customers at one time or another in that bank.

Q Treasury bills. You handled Treasury bills at that bank?

A I don't remember that.

Q At any rate, whenever it was that you affixed

your approval to the August 9th $70,000 transaction, you knew at that time that you had already approved a cash withdrawal from the bank account, didn't you?

A Apparently, yes.

Q Did you make any further inquiry as a result of this rather fast withdrawal which you had approved before accepting additional of these notes for a similar transaction?

A I don't remember whether any further inquiries were made.

Q Your best recollection is that none was was made by you?

MR. HALPERN: Objected to.

A I don't recollect whether any were made or not.

Q Wasn't this transaction a rather unusual one for you where a man comes in and comes in with a series of the same kind of notes, a man whom you never had any substantial dealings with before, and is trying to get cash for them as quickly as possible? Wasn't that an unusual transaction for you?

MR. HART: I didn't hear the last words.

THE COURT: Wasn't it an unusual transaction for you.

MR. HART: Your Honor, I object to the form of the question in that it attempts to summarize the evidence rather than simply ask the witness about the transaction.

THE COURT: I will let him answer the question.

Q Please answer.

A Well, you are asking me to make a judgment now about a judgment that I made then. At the time it may not have seemed so unusual. I mean, now hindsight is easy, but I don't think that it was -- apparently it didn't seem that unusual then.

Q Had you had any other transaction where a man is showing you bearer notes and telling you that somebody else owns it and they are in large denominations and he's trying to draw down cash as quickly as possible? Had you had anythihng like that before?

A I don't recall.

Q These were treasury notes which he himself could present to any broker, could he not?

A Certainly.

Q It doesn't require the intervention of a bank, does it?

A It does not, no.

Q Did that excite any curiosity on your part to find out why this man, residing in Brooklyn, came to a Bronx branch of a bank in order to negotiate Treasury bills which could just be presented either to the government or to any brokerage company?

A I'll answer the question in two parts. One, to the best of my recollection, he worked in the area, and he had business in the area.

The second thing is that an awful lot of customers of the bank sell stocks and bonds through the bank rather than through a broker.

Q Where did he work in the area? Where?

A I don'trecall.

Q Would there be any record of the bank perhaps or some record that you made or some record made by your associates that would tell you he worked in the area?

A I would imagine so, yes.

Q Have you ever seen it?

A What do you mean "ever"?

Q Have you ever seen it?

A I don't recall. I'm sure that -- well, I would look at my prior testimony. Did he not have business accounts at the bank?

Q I'm asking about his working in the area. Where did you get that from?

A That was -- that was a use of language that was probably incorrect.

Q You didn't mean it that way.

A Okay.

MR. HART: I'm sorry, your Honor. I couldn't hear what the witness said.

THE COURT: It was a use of language. He didn't mean it that way.

Q When you were talking to Mazzochi about selling the stuff, did you go looking at what you say were his business accounts?

A I don't recall if I did at the time.

Q Did you know anything about the size of these so-called business accounts?

THE COURT: Now we are back to the question which you have already asked him and it is answered.

MR. JULIEN: All right. I withdraw it.

Q The first two transactions, involving 10,000 and the second involving 60,000, did they occur on the same day?

A I don't recall.

Q I asked you before about whether there wasn't a practice where Santoro could get your approval after he had already consummated the transaction. Here I'm referring to the second transaction, on August 9th. Did you testify --

MR. HART: That would be the third transaction, I believe.

MR. JULIEN: All right.

THE COURT: Yes.

MR. JULIEN: Yes, August 9th.

BY MR. JULIEN:

Q Didn't you testify in this examination before trial, page 21, in this case, question page 21, line 10:

"Q In other words, Mr. Santoro in the loan department couldn't sell these notes without first getting the approval of either you or any one of the three men in the credit department?

"A That's not really perfectly so. And he could sell it and get approval after the facts."

Do you accept the substance of that answer --

A Yes.

Q -- as truthful?

A Yes.

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Q Does that refresh your recollection that August 9, when you say you didn't see him after the first transaction, that if you were the one who approved it on that date you didn't approve it with Mazzochi sitting face to face with you, but that you didn't see him and you approved it later on?

A Well, as I said previously, I could have approximate it later on after the bonds were sold or I could have approved it later on after Mazzochi had left and before the bonds were sold.

I don't recall. I mean,you would have to have Santoro to tell you when he got my approval on it and I don't recall. I don't know if he recalls.

Q Not necessarily did you approve it before Santoro accepted the bonds on August 9th?

MR. HART: Objection, your Honor. It calls for speculation.

A I don't recall.

THE COURT: Sustained.

Q Could you by any means, recall whether this conversation, that you had with Mazzochi on that single time that youtalked to him, was in the morning or in the afternoon?

A No.

Q I didn't think you would.

Let's see if we can refresh you by testimony you gave in the criminal case at pages 70 and 71. This is a question relative to that conversation you had with Mazzochi.

Towards the bottom of the page, gentlemen.

"Q Do you recall what time of the day he came in; in the morning, the afternoon?

"A As I recall, it would be in the morning or the very early noontime or thereabouts.

"Q Whatever your best recollection is.

"A I would guess in the morning. That would be my best recollection."

You accept that, your recollection in 1968?

A I will accept that.

Q All right.

Skipping down to page 71.

"Q Did you see Mazzochi on the same day?

"A He brought in more bonds later that day.

"Q And how much more bonds did he bring in?

"A $60,000 worth.

"Q So, in other words, he brought in $70,000 worth of bonds on August 5, 1966, is that correct?

"A That's correct."

Did you so testify and do you accept the substance of that as true?

A I will accept the substance.

Q By the way, you knew Santoro before this transaction occurred, did you not?

A Yes.

Q Youknew that his usual occupation, when he was not substituting for Mr. Landberg, was that of clerk?

A I am trying to recall what his job was when he substituted. I can't.

Q We don't have to spend time on that.

A I think he was more than a clerk.

Q What?

A I say I think he was more than a clerk, but that is a definition. It is not important.

Q Did you ask him to do any checking for you of any kind?

A I don't recall.

Q Would that be a practice, to ask that there be some checking done?

A What kind of checking are you referring to?

Q Checking with respect to the treasury bills. Before handling such a transaction for sale of it.

A I don't recall whether that would have been a

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procedure or not. I would think he had procedures to follow.

Q He had.

A I say I would think that he had procedures that he would follow whether I asked him to or not.

Q But that, too, is not a matter that you know?

A I don't know -- I don't recollect it. I am not sure.

Q Do you recall that in the criminal case the District Attorney showed you this authorization by Mazzochi to sell the first $10,000 of treasury notes and asked you whether that refreshed your recollection that this one time that you talked to him was on August 4th and not on August 5th, do you remember that happening?

A No.

MR.JULIEN: All right. The next question and answer I am going to read refers to this exhibit which is our Exhibit B, your Honor, the first page.

THE COURT: Yes.

Q Page 107, the criminal trial.

"Q Mr. Kayner, I show you this Defendants' Exhibit A in evidence and askyou to look at the date. What is the date?

" A August 4, 1966.

"Q Does that refresh your recollection with respect to when Mazzochi came in?

"A Well, the fact that the receipt is dated August 4 doesn't necessarily mean that I spoke to Mazzochi on August 4. It is possible that was the day I spoke to him. I would think it was August 5. I can't be 100 per cent sure of either one."

Then the District Attorney says:

"Q Isn't it possible that, by your own statement now, that Mr. Mazzochi came in on August 4th and also came in on August 5th?

"A Well, not to see me."

Do you accept the substance and the truth of those answers?

A Yes.

Q I am not sure whether I have asked this question or not. I don't mean to be repetitious but I am really not sure.

On August 9, when you appended your approval, whenever it was, to the third transaction involving $70,000 of treasury bills, did you examine into the Mazzochi account at that time to see what your then balance was?

A I don't recall. I don't recall.

Q Would that have been good practice?

A I don't see what one has to do with the other.

Q Well, considering that you knew that the bills, from Mazzochi's own statement, were not his, that he was selling them for somebody else, do you consider that would have been proper practice to find out whether so soon after the event he was attempting to get cash on it?

A In my opinion, when somebody is selling stocks or bonds, regardless of whether it is for themselves or for somebody else, they usually want the money for something, not to leave it in the bank.

Q With stocks or bonds, you have an additional safeguard, do you not?

A You weren't discussing safeguards. You were talking about balances in the account.

Q But you agree there is an additional safeguard with stocks and bonds, yes?

A Yes. Yes.

THE COURT: I am going to make you a witness and put you on the stand pretty quickly. There are no additional safeguards in bearer bonds than treasury bills. They are the same thing. Do you want me to testify about that? That is what you are doing.

MR.JULIEN: I am talking principal.

THE COURT: No, forget it. That question is

out.

Q Considering the information that you had up to that time, this isn't his money, it is something for somebody else --

MR. HART: Objection,your Honor.

THE COURT: Yes.

Q -- that this is Mazzochi's family's --

THE COURT: Wait a minute. This man had one conversation. You keep misstating the evidence. He had one conversation on the first transaction, according to all tne evidence that is in. That was with respect to a $10,000 bill and that was belonging to his family. He has no knowledge, and he has stated he has nothing with respect to any knowledge that he had as to where these original bills came from.

So you have got $10,000. That is where you are stuck right now.

MR. JULIEN: I am glad your Honor brought that to my attention.

Q The amount of the bills in this conversation thatyou had with Mazzochi, weren't you aware that he brought in the$60,000, too, that same day? You said so.

A I said it in my testimony.

Q Yes.

A Well,yes. I am not refuting my testimony.

G All right. So that you knew that very first day, the day that you had this conversation, that there was at least $70,000 of these notes, right?

A I don't know that. I don't recall whether the conversation was about 70 or 10. I mean, my testimony indicated that he brought in another 60 and I approved the sale of it, but I don't know if the conversation related to 10 or 70.

Q When the second batch came in of 60,000, you approved that, too?

A Yes.

Q Did you ask any additional questions?

A I don't recall.

Q You had no additionalc onversation?

A Apparently not.

Q So the only conversation you had up to the time you approved both the 10 and the 60 was the conversation where this man said he had some stuff he wanted you to sell for him and that it belonged to this family, right?

MR. HART: Objection,your Honor. The witness has said time and again he doesn't recall. Now counsel keeps asking --

MR. JULIEN: Just a minute. Since he knows how

to do it, I don't think any suggestion has to be made.

THE COURT: He is not making a suggestion. I want no more colloquy between counsel. State your objection on the record.

MR. HART: I object --

THE COURT: You were interrupted.

MR. HART: I object to the question, your Honor, because the witness has stated time and again that he doesn't recall, and counsel is putting words into his mouth and asking him now do yourecall this and now do you recall that. He says he doesn't recall.

THE COURT: I sustain the objection.

MR. JULIEN: I respectfully except.

Q In all, you approved $140,000 worth of treasury bills negotiated by Mazzochi, the avails of which went into his personal account, right?

A Well --

Q Well, it is 70 on one day and --

A I will accept that figure,yes, from what you have showed me.

Q Other than his conversation where he said that the stuff belonged to his family, you never had a conversation where he said,"I own it myself," did you?

MR. HALPERN: Objection.

THE COURT: Sustained.

Q Did you ever have a conversation where he said, "I own it myself"?

MR. HALPERN: I object to it.

THE COURT: I will sustain it.

MR. JULIEN: On what grounds, your Honor?

THE COURT: You have the whole conversation that he had. Incidentally, we are not talking about ownership here, we are talking about a right to possession.

MR. JULIEN: Yes.

THE COURT: Keep that in mind. Ownership means nothing in a conversion.

MR. JULIEN: We are talking about that.

Q Did you ever ask him for any indicia that he had the right to possession given to him by members of his family?

A I don't recall.

Q If you did, you would recall that, would you not?

MR. HALPERN: Objected to.

MR.HART: Ob jection.

THE COURT: Sustained.

MR. HALPERN: It is argumentative.

Q Did you had any such indicia, it would be in

the bank files, would it not?

A I would think it would be in my original testimony when I had a better recollection of it.

Q Since it is not in your previous testimony that you ever asked for any such indicia, do you accept that as the fact, that you didn't?

MR. HART: Objection, your Honor, unless the testimony is read. I don't recall the witness denying that fact.

MR. JULIEN: He never said he did it.

Q In the examination before trial were you asked the following questions and did you give the following answers, page 12, line 25:

"Q Did you know anybody in Mazzochi's family as of August 1966?

"A No.

"Q You never met anybody in his family?

"A No. "

Skipping to page 29, line 10.

"Q Were you selling these bonds, this $70,000 batch for Frank Mazzochi personally?

"A That was his request."

Do you accept the substance and the truth of that?

A Yes.

"Q Personally or for his family?

"A He said that the bonds were owned by his family and he wanted to sell them.

"Now, his family had no accounts with us, so we were going to sell it for him. He brought in the bonds not physically, but he wanted the bonds sold for his family."

Do you accept the substance and the truth of that?

A Yes.

Q This conversation that you had with him, the single conversation, didn't refer to a bond of $10,000, did it?

MR. HART: Objection, your Honor.

THE COURT: Sustained.

Q The next question: "Did you make any inquiries about how his family were or for which part of his family he was selling these bonds?

"A No. Again, I don't remember if I specifically asked him who in his family we were selling it for.

"Q Did you know where his family lived?

"A No."

THE COURT: That is repetitious. You know a lot of this is repetitious. Let's stay with the issues.

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MR. JULIEN: All right.

Q Apparently the first transaction involving $10,000 was succeeded by a second transaction of $60,000, according to your testimony, on the same day. Did you ask any question as to why first he tried the $10,000 and the same day brought in a much larger amount after the first note --

MR. HART: Objected to.

Q -- after the first note had been accepted by the bank?

MR. HART: Objection, your Honor.

THE COURT: Sustained.

Q Did you ask any question at all about thed fact that this transaction was split up on the same dav?

MR. HART: Objection, your Honor.

THE COURT: Sustained.

MR. JULIEN: Is that because it is repetitious, your Honor.

THE COURT: I am sustaining it because the witness has already testified that he had nothing but the first conversation with him, so to ask the question did he ever ask them after the first conversation is ridiculous.

MR. JULIEN: I see.

Q Well, would you consider that to be a curious

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situation, that first this man, who evidently lives in Brooklyn, comes to your branch bank in the Bronx, first tries the waters with a $10,000 bill, and once he has succeeded in getting you to accept that, turns up on the same day with a batch, the same currency, the same kind of maturity date, for an additional $60,000; did you consider that to be curious?

MR. HART: Objection, your Honor.

THE COURT: I will sustain the objection.

Q Was your curiosity excited by the fact that here is a man --

MR. JULIEN: No, this I did ask before. Forget it.

If your Honor please, I am going to offer in evidence Plaintiff's Exhibit 42 for identirfication, just again with respect to the check in the center of both pages, a check dated August 9th.

THE COURT: Why don't we offer the check in the center, period? Just cut it out.

MR. JULIEN: Yes, I will do that. I just want to show it to them in a recognizable form.

MR. HALPERN: No objection.

MR. HART: No objection.

THE COURT: All right. Received.

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MR. HART: Is that Exhibit 42?

THE COURT: Yes.

(Plaintiff's Exhibit 42 was received in evidence.)

MR. HALPERN: Mr. Julien, is that the correct back of that check?

MR. JULIEN: Yes.

Q I show you Exhibit 42, a check dated August 9, '66, again to Cash, on the account of Frank Mazzochi, in the sum of $10,000.

MR. HALPERN: If your Honor please, the document speaks for itself. It's in evidence. Why read it again.

Q Are yours the initials which appear on that or do you recognize them as those of one of your associates?

A No. It would have been McGraw's.

Q What was McGraw's position at the bank?

A I think an assistant vice president.

Q Have you any recollection of McGraw speaking to you on or about August 9th with respect to these cash withdrawals from that account?

A I don't recall.

THE COURT: I was hoping that you would

finish with this witness before lunch? I can't do that this morning?

THE COURT: I'm going to make a rule now that you are going to move with these witnesses because there have been too many delays. There have been too many consultations. If you are going to cut some paper dolls on other exhibits, do it before I get back.

I also want a copy of every one of the depositions that you or any counsel are going to use. I do not have them here.

The only depositions that I have are Hawthorne, Pryor, Holtshauer, Frank Mazzochi -- two of them -- and a Louis D'Agostino. Those are the only ones I have.

We'll be in recess until 2 o'clock.

Don't discuss the case with anyone, Mr. Kayner.

(Luncheon recess.)

ebb-1 AFTERNOON SESSION 220
2:00 P.M.

R O B E R T I. K A Y N E R resumed.

DIRECT EXAMINATION (continued)

BY MR. JULIEN:

Q Do you recall being asked the following questions on your examination before trial onO ctober 4, 1969, and giving the following answers:

I am at page 48, gentelemen.

THE COURT: I don't have the deposition.

MR. JULIEN: We are finding some, your Honor. The lawyers who were in the case at that time -- as you know, I was not -- they found some. They haven't found this gentleman's yet.

THE COURT: All right, go ahead.

MR. JULIEN: Judge, it just came in (handing).

THE COURT: What page again, Mr. Julien?

MR. JULIEN: Page 48, sir.

THE COURT: All right.

Q Line 5, having to do with the authority to use the proceeds of the bills.

"Q In other words,you took it for granted that Mazzochi had the authoirty to use the proceeds " -- and then there are some objections and the question starts at 15.

MR. HART: I object to the reading of that question and ask that it be stricken from the record on the ground that it was not answered by the witness.

THE COURT: It may be stricken since there wasn't an answer.

Q I will start from the beginning.

What was your basis for believing that Mazzochi had authority to sell these $70,000 in United States securities? That is just authority to sell.

A My conversation with him originally was that he was selling them for his family. That was taken as his authority.

Q Just his word?

A Right.

Q As the credit officer on duty at that time you considered that taking the word of a man who said he didn't own, that someone else owned these notes, was sufficient to satisfy you as to his authority? Yes?

A That is what I testified.

Q And that was your general practice at that time?

A I can't recall if that was general practice at that time.

Q Actually what you were doing was assuming he had the authority, were you not?

MR. HALPERN: Objection.

MR. HART: Objection.

THE COURT: I will let him answer the question.

A I don't know what you -- I have just answered that I don't recollect anything other than the fact that I accepted his word that he could sell it. If you want to use the term "assumption," I guess that is a term that could be used.

Q Weren't you asked, in the same examination -- please turn to 49 -- line 10 --

"Q But you took it for granted that he had the authority to sell?

"A Yes. When you say I took it for granted, on the basis of our conversation I assumed he had the authority. I deduced he had the authority. I made the judgment he had the authority."

Do you accept the substance and the truth of that statement?

A Yes.

MR. HART: At this point I would like to object to the omission of the two or three questions at the bottom of page 48 and the top of page 49 that were in between the parts that counsel just read. I think they should be read at this time.

MR. JULIEN: Counsel is at liberty, as I understand, to read any part that he wishes to call the Court's attention to.

THE COURT: You don't have to read it into the record, but I will assume that you read into the record line 19, page 48 through line 9 of page 49.

MR. HART: Thank you, your Honor.

THE COURT: Because I have read it.

Q You were aware, were you not, even back in those days, that bearer notes of this type could be illegally in the possession of the person presenting it?

MR. HALPERN: Objection.

MR. HART: Objection.

MR. JULIEN: Part of his duties.

THE COURT: Overruled. I will let him answer.

A I am sure I was aware of it.

Q I didn't hear you?

A I am sure I was aware of it.

Q Now, when you attended in the criminal court in the prosecution of the charge of illegal possession of these same notes, were you accompanied by any attorney representing the Royal Bank?

A I don't recollect.

Q Prior to your appearing there, had you been

prepared in the presence of any attorney or representative of the Royal Bank?

MR. HALPERN: I will object to that as being so far afield from this.

THE COURT: I am going to sustain the objection to that. It is completely immaterial to this case.

Q You were interested, at the time this man appeared before you and told you he wanted to sell his property, these notes, you were interested in whether or not he owned them, weren't you?

A Certainly.

Q And that was the purpose of your questioning him concerning the ownership, wasn't that so?

A Yes, I would ay so.

Q If it developed that he was not the owner, you would proceed in one fashion; if he were the owner, you would proceed in another?

MR. HALPERN: Objection.

MR.HART: Objection.

THE COURT: Sustained.

MR. JULIEN: If you will just give me a moment, your Honor, I believe I am at the end of my direct examination.

(Pause.)

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MR. JULIEN: If your Honor please, I am going to offer, without reading, but for comment later on, the testimony of this witness in the criminal proceeding had against the defendant Mazzochi in view of repeated manifestations of lack of recollection.

This being his first testimony under oath, I will offer it and point out in our brief where it contradicts or supplies information which he presently professes not to know.

MR. HART: I object, your Honor. My understanding was that the testimony could be read while the witness is on the stand, he could be asked if he remembers it, if he doesn't remember it, it could be used as evidence in chief, but the idea of putting the entire prior testimony in evidence without the witness being present, I believe is improper and I object.

MR. JULIEN: I thought we formulated procedure to that effect.

THE COURT: That was what I thought we had agreed upon.

MR. HART: Is that what we agreed upon, that the entire transcript could go in?

THE COURT: Only to the extent that it is referred to at a later time in the briefing, in the findings. In

other words, you could put the whole deposition in evidence and the Court would consider only those items that you refer to specifically by line and page in your proposed findings.

MR. HART: Simply to clarify it, your Honor, I had thought that that applied only to deposition who were testifying not live.

THE COURT: It applies to any deposition. The whole purpose of this was that we would be reading it in court, into the record, and then I will be reading it again, and it is a waste of your time and my time. I will read whatever you refer me to.

MR.HART: And then it will be the function of reply briefs to object to the reference to any testimony, is that correct?

THE COURT: It will be your purpose to object to any testimony or to clarify it with whatever you may have as you did just recently with these statements between pages 48 and 59.

MR. JULIEN: That was my understanding of what we were doing.

MR.HART: I don't mean to belabor the point, your Honor, but I just want to have clear. I have no problem then with respect to the depositions taken in the

action, and now counsel is offering the testimony at the criminal proceeding.

THE COURT: It is my understanding --

MR. HART: Are we extending it to that also?

THE COURT: I will extend it to that.

MR. HART: Then I will accept that. That, I take it, applies, again, to anyone's testimony in either the criminal proceeding or any depositiont aken in this action.

THE COURT: Yes. That is my point.

MR. HART: I will withdraw my objection then.

MR. JULIEN: All right.

Pages 68 to 133 of the transcript of testimony from the criminal proceedings.

MR. HART: Your Honor, may I suggest, with respect to the transcript of the criminal proceedings, since I don't really know how the various copies were made available, I have what purports to be a complete copy and I imagine Mr. Julien does also, but perhaps after the trial is complete, the attorneys can agree upon a copy of all of the pages and we can submit a complete set to the Court.

MR. JULIEN: You don't have to belabor it. We took this right from the amended record on appeal, and it is from the New York Law Institute. This is a photostat

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of what is in here.

MR. HART: Should it not be a complete set, your Honor?

MR. JULIEN: It is complete as to his testimony.

THE COURT: It is complete as to his testimony.

I will expect you both to verify that. Get together on it.

MR. HALPERN: That is what page? 68 to 133?

MR.HART: I simply want to make sure that I have a copy of what you have andyou have a copy of what I have.

THE COURT: Exactly. What number is that?

MR. JULIEN: We have to get a number. I am sorry, Judge.

THE CLERK: 43.

xx (Plaintiff's Exhibit 43 was received in evidence.)

THE COURT: Subject to verification by counsel.

MR. JULIEN: Now, your Honor, I want him to refer back to Defendants' Exhibit E for identification, not for the purpose of asking your Honor to reverse something you have already said, but I am going to offer it under an additional or separate rule under the new Federal Rules of Practice, and here I refer to Rule 801, subdivision 2, which I think is a new rule so far as I recall, dealing

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with admissions by a party opponent and a statement can be offered against a party if it is either his own statement, in either an individual or representaitve capacity, or a statement of which he has manifested his adoption or belief in its truth, or a statement by a person authorized by him to make a statement concerning the subject, a statement by his agent or servant concerning a matter within the scope of his agency or employment made during the existence of a relationship.

The last paragraph doesn't apply here.

THE COURT: I am familiar with the rule and the same ruling is made with respect to that rule because that has no applicability to what I consider to be work product.

MR. JULIEN: But,your Honor, even if this were work product, the minute he showed it to a witness that was the end of it.

THE COURT: I have already said it was work product, so don't say "even if." Let me say it this way: If we had all of these gentlemen in one room interviewing him as an attorney, what you are telling me now is what I put down on a yellow piece of paper as to what they said, you would be entitled to?

MR. JULIEN: Only if another event has taken place, to wit, that you show it to a witness.

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THE COURT: No other event has taken place because all the witnesses were present. They all knew about what each other said.

MR. JULIEN: After transcribing it was given to Santoro who retained a copy of it. There is no further Hickman-Taylor work product.

THE COURT: I am sorry, I think there is. I think it never loses that character. It never loses that character.

MR. JULIEN: I respectfully disagree, your Honor.

THE COURT: All right.

MR. JULIEN: Now, your Honor, would you permit an interruption? I have completed my basic examination. I have that witness here from the FederalReserve, you remember,Weis? And it is a short witness, and he wants to get away. Could we do that?

THE COURT: Do you have any objection, Mr. Hart?

MR. HART: Not on behalf of Royal National Bank, no, sir. I have no objection on behalf of defendant Royal National Bank.

THE COURT: Mr. Halpern, do youhave any objection if we put Mr. Weis on the stand before we proceed with

this witness?

MR. HALPERN: I have no objection.

THE COURT: All right, you are excused for the time being.

You may leave the courtroom but don't leave the courthouse.

We will call you back as soon as we are finished with this witness.

(Witness temporarily excused.)

1A PM

S T E P H E N W E I S, called as a witness by plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JULIEN:

Q Mr. Weis, I am Mr. Julien. We have never met, have we?

A No.

Q You were deposed at one time in this case of United States Fidelity & Guaranty Company against Royal National Bank and another?

A Yes.

Q Have you been given an opportunity to review your deposition before taking the stand?

A Yes, I have.

Q You did that today?

A Yes.

Q All right.

Now, Mr. Weis, back in 1966 were you affiliated with the Federal Reserve Bank of New York?

A Yes.

Q And --

MR. JULIEN: May I lead just to save time on the introductory parts?

THE COURT: Yes.

Q Were you the chief of its government bond division?

A Not at that time.

Q That was your position at the time you were examined?

A Yes.

Q What was your position back then?

A Personnel relations representative.

Q And were you based at 38 Liberty Street in New York City?

A Yes.

Q Did you know a person named John Masterson?

A Yes, I did.

Q Had he been the chief of the government bond division located at 33 Liberty Street and also employed by the Federal Reserve Bank?

A Yes.

Q And had you worked under him?

A Yes, I did.

Q Now, was Federal Reserve, and is Federal Reserve, the fiscal agent of the United States in dealing with Treasury securities, including Treasury notes?

A Yes, that's correct.

Q Would that include bearer notes as well, Treasury bearer notes?

A Yes.

Q In the year 1966 did the Federal Reserve Bank at 33 Liberty Street -- if I have used the term 133 in my previous question, you understand I mean 33.

A Yes.

Q Did that office keep any listings of missing or stolen United States Treasury notes in 1966?

A No.

Q Where were those listings kept?

A They were kept at the Bureau of the Public Debt in Washington, D.C.

Q And if you received any inquiry concerning Treasury notes, Series A, due 1970, as to whether they were missing or stolen, or so reported to the United States Government, what would the answer be of your department concerning such inquiry?

A We would have to refer the party making the inquiry to the Bureau of the Public Debt in Washington.

Q Did the Bureau of Public Debt have any office in New York City in 1966?

A No.

MR. JULIEN: You may inquire.

CROSS EXAMINATION

BY MR. HART:

Q Mr. Weis, are you still the chief of the government bond division of the Federal Reserve Bank?

A No, I am not.

Q When did you cease being chief?

A In June of 1972.

Q And what are you doing now?

A I am operations analysis officer, still in the government bond function of the bank.

Q In 1966 I believe you said you were in personnel relations?

A That's right.

Q Would you please tell us what that involved?

A I worked in the area of promotions, transfers between divisions, and personnel counseling.

Q Did you have anything to do with securities at that time?

A No, I did not.

Q In addition to being the fiscal agent of the Bureau of the Public Debt, does the Federal Reserve Bank have any other functions?

A Yes, it does.

Q Would you describe some of its functions, please?

A It is responsible for the monetary policy of the country with respect to the purchase and sale of securities, and that's apart from fiscal agency function. It serves as a central bank of the United States in relationships with foreign central banks and foreign governments.

Those are the major areas that it is involved in.

Q Does it have dealings with banks throughout the City of New York?

A Yes, it does.

Q In a variety of areas?

A I'm sorry?

Q In a variety of areas?

A Yes, it does.

Q Do you know whether it was a common practice in 1966 for banks or stockbrokers to report to the Federal Reserve Bank that there were missing or stolen securities?

MR. JULIEN: I will object to that, if your Honor please. Outside the scope of direct examination, for one thing, and secondly, his familiarity or

basis for that kind of an opinion has not yet been elicited.

THE COURT: Overruled. You may answer the question.

THE WITNESS: Would you read the question.

(Question read.)

A No, I don't.

Q You do not know whether that was done? Is that what you are saying?

A I do not know whether it was a common practice.

Q Was it done at all, to your knowledge?

MR. JULIEN: That I object to.

THE COURT: I will let him answer it.

A Was it done at all?

Q Yes.

A I can't answer because I was not in the government bond division at that time.

Q When if you odn't know whether such reports were made, you would not know whether any list was kept of those reports, is that true?

A No, that is not true.

Q Well, would you please explain how you can know, in 1966, that such lists weren't maintained by

someone on behalf of the Federal Reserve Bank?

A In 1958 the Treasury Deaprtment issued instructions to the Federal Reserve Banks instructing them not to maintain lists of either missing or stolen securities and not to take any action such as a stop payment action with respect to such securities, and they were told to destroy any lists that they might have in their possession at the time.

MR. JULIEN: Yhe witness dropped his voice at the tail end.

(Answer read.)

Q Who did you say issued that directive?

A The Treasury Department, the Bureau of the Public Debt.

Q That would be --

A That is a bureau in the Treasury Department.

Q Do you know why they issued that directive?

MR. JULIEN: That I object to.

THE COURT: I will sustain the objection to that question.

Q Is it not the policy of the Bureau of the Public Debt to take no steps to interfere with the renegotiability of its securities?

MR. JULIEN: Objection.

A I qualified the answer to that.

THE COURT: He qualified the answer.

MR. JULIEN: All right.

Q Is the Federal Reserve Bank responsible to and subordinate to the Bureau of the Public Debt?

A I have some difficulty with the way you phrase that. It's only a fiscal agent of the United States, and in transactions with that relationship, it would be, yes.

Q Only to the extent that it is the fiscal agent?

A The fiscal agent with responsibility.

Q Therefore, a directive issued by the Bureau of the Public Debt would only be with respect to the activities of the Federal Reserve Bank as fiscal agent, is that correct?

A That's correct.

Q Now, as fiscal agent of the Bureau of the Public Debt, the Federal Reserve Bank engages in denominational exchanges, is that correct?

A Yes.

Q Would you explain to the court, please, what denominational exchanges are?

A This is the exchange of a Treasury security

of a particular denomination for a like amount of the same issue of securities but of different denominations. An example would be a $10,000 bond paid in exchange for two $5000 bonds.

pmdha Q In addition, is it not correct that the Federal Reserve Bank, as fiscal agent for the Bureau of the Public Debt, redeems securities upon maturity?

A Yes.

Q Are those the two basic functions which it performs as fiscal agent for the Bureau of the Public Debt?

A There are others, but those are the two basic.

Q The directive which was received by the Bureau of the Public Debt was intended, was it not, if you know, to permit denominational exchanges or redemptions to take place without there being any record which would prevent that from taking place because of the report that the securities in question were missing or stolen, is that correct?

MR. JULIEN: Already been asked. The witness said he was not qualified to answer.

THE COURT: Sustained.

MR. HART: Your Honor, the witness is the